

**HIGH COURT OF JUDICATURE AT ALLAHABAD**

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**PUBLIC INTEREST LITIGATION (PIL) No. - 1969 of 2022**

Kushwaha Mahasabha and another ..... Petitioners

Through :- Mr. Gulab Chandra, Advocate

v/s

State of U.P. and others ..... Respondents

Through :- Mr. A.K. Goyal, Additional Chief Standing  
Counsel for respondent nos. 1 to 3  
Mr. Siddhartha Srivastava, Advocate for  
respondent nos. 4 to 6

**CORAM : HON'BLE RAJESH BINDAL, CHIEF JUSTICE  
HON'BLE J.J. MUNIR, JUDGE**

**ORDER**

1. Present petition was filed by the petitioner claiming it to be in public interest, praying for the following reliefs:-

“i) Issue a writ, order or direction in the nature of writ of mandamus commanding to the respondent District Magistrate to proceed to take necessary action for removing unauthorized constructions and obstructions raised by the private respondents over the land No. 509, 510, 567, 569, 570, 571 Saidpur Hakins District Bareilly which has been axquired for carrying out Mini Bye Pass Road for public convenience within reasonable time, to meet out the ends of justice.

ii) Issue writ order or direction in the nature of writ of mandamus commanding to the respondent authorities to get the public money amount of compensation wrongly received by the respondent Anupama recovered from her with appropriate interest and to initiate penal action against her for playing fraud with the authorities in the interest of justice within stipulated time fixed by this Hon'ble Court.

iii) Issue writ order or direction in the nature of writ of Ad interim mandamus commanding to the respondent District Magistrate to take appropriate action on the complaint dated 05.07.2022 preventing obstructions and encroachment over the public utility land of Mini Bye Pass Road situated in village Saidpur Hakins, District Bareilly within reasonable time to secure the ends of justice.”

2. Counter affidavit has been filed by the private respondents in November, 2022, copy thereof was given to the petitioners' counsel on November 28, 2022, but till date no rejoinder affidavit has been filed. An adjournment has been sought for filing the same, which we decline as sufficient time was available with the petitioners to file rejoinder affidavit specially keeping in view the pleadings made in the counter affidavit.

3. In the counter affidavit filed by the private respondents, copy of the F.I.R. has been annexed, which was lodged by the private respondent No. 5 against petitioner No. 2 under Sections 419, 420, 467, 468 and 471 I.P.C., P.S. Baradari, District Bareilly. It is further

pleaded in the counter affidavit that after investigation, charge-sheet was filed against petitioner no. 2 and the Court concerned has even taken cognizance and the trial is pending.

4. As a counter, petitioner No. 2 got one F.I.R. registered against respondent No. 5 under Sections 195, 195-A and 420 I.P.C., P.S. Baradari, District Bareilly in which respondent No. 5 was arrested, released on bail. In that also the charge-sheet has been filed. However, in a Criminal Misc. Application No. 31925 of 2022, filed by respondent No. 5 for quashing of the F.I.R. and further proceedings, an interim stay has been granted by this Court on October 10, 2022. The matter is still pending.

5. It is further pleaded that even wife of respondent No. 5 got one F.I.R. registered against petitioner No. 2 under Sections 147, 148, 149, 452, 307, 323, 504, 506 and 427 I.P.C., P.S. Izzat Nagar, District Bareilly, in which the charge-sheet has been submitted.

6. It is further pleaded that another F.I.R. was lodged by domestic helper of respondent No. 5 against petitioner No. 2 under Sections 147, 427, 323, 394 and 336 I.P.C., P.S. Izzat Nagar, District Bareilly, in which investigation is going on.

7. Thereafter, the petitioner no. 2 filed an application under Section 156 (3) against respondents No. 4 and 5 which was dismissed

by the Special Judge, Prevention of Corruption, Court No. 1, Bareilly vide order dated September 24, 2021.

**8.** Respondent no. 5 also filed an application under Section 156 (3) Cr.P.C. against petitioner No. 2 and others before the Special Judge, Prevention of Corruption, Court no. 1, Bareilly, which was treated as a complaint case vide order dated March 28, 2022.

**9.** Still further, it is pleaded in the counter affidavit that petitioner No. 2 is working as Assistant Teacher under the Basic Education Board and is presently posted at Middle School (Poorv Madhyamik Vidyalaya), Sindhauli, District Bareilly.

**10.** In para-12 of the counter affidavit, it is pleaded that petitioner No. 2 is a history-sheeter. The petition filed by him before this Court bearing Criminal. Misc. Writ Petition No. 11931 of 2020 for closing the history-sheet, was dismissed by this Court on October 14, 2022.

**11.** At page-54 of the counter affidavit, a communication from the Superintendent of Police, Bareilly to the District Magistrate, Bareilly way back in the year 2017, has been annexed, wherein details of various cases registered against petitioner No. 2 have been mentioned which reads as under:-

"i) Case Crime No. 162A of 1989 under Sections 149, 307, 323 I.P.C., Police Station Meerganj, District Bareilly;

- ii) Case Crime No. 74 of 1996 under Sections 307, 504 I.P.C., Police Station Meerganj, District Bareilly;
- iii) Case Crime No. 773 of 2014 under Sections 147, 148, 447, 511, 307, 504, 506 I.P.C., Police Station Izzat Nagar, District Bareilly;
- iv) Case Crime No. 140 of 2017 under Sections 147, 148, 149, 307, 452, 323, 504, 506, 427, 341 I.P.C., Police Station Izzat Nagar, District Bareilly;
- v) Case Crime No. 164 of 2017 under Sections 147, 148, 149, 427 I.P.C., Police Station Izzat Nagar, District Bareilly;
- vi) Case Crime No. 165 of 2017 under Sections 188 I.P.C. and 30 Arms Act, Police Station Izzat Nagar, District Bareilly;"

**12.** In the instructions received by learned counsel for the State, there is nothing mentioned about the credentials of petitioner No. 2 or that he is a Government employee, however, what has been stated is that there is no double payment of compensation to the private respondent and as regards encroachments, a Committee was constituted to look into that aspect and it was found that there was no encroachment.

**13.** A perusal of the writ petition shows that the petitioners have deliberately concealed the factum of petitioner No. 2 being a Government employee working as Assistant Teacher under the Basic Education Board. He has further concealed the factum of various

criminal cases registered by him/against him against/by the private respondents.

**14.** In view of the above, it is clear that there is material concealment of fact in the present case.

**15.** As to how a litigant who conceals material facts from the Court, has to be dealt with, has been gone through by Hon'ble the Supreme Court time and again and the consistent opinion is that he is not entitled even to be heard on merits.

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

**"18.** ... 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 LPASW No. 82/2019 Page 7 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.

19. 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 LPASW No. 82/2019 Page 8 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."

**20.** In **G. Narayanaswamy Reddy v. Govt. of Karnataka's case** (*supra*), the Court while noticing the fact regarding the stay order passed by the High Court which prevented passing of the award by the Land Acquisition Officer within the prescribed time period was concealed and in the aforesaid context, it observed that :

"2. ... 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."

**21. In Dalip Singh v. State of U.P. (2010) 2 SCC 114,** Hon'ble the Supreme Court noticed the progressive decline in the values of life and observed:

"1. 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.

2. 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."

(emphasis supplied)

17. In **Moti Lal Songara Vs. 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:

"19. 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 supressio 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.

20. 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."

(emphasis supplied)

18. 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.**

19. In a recent judgment in **ABCD Vs. Union of India and others (2020) 2 SCC 52**, Hon'ble the Supreme Court in the matter where material facts had been concealed, while issuing notice to the

petitioner therein, exercising its suo-motu contempt power, observed as under :

"15. Making a false statement on oath is an offence punishable under Section 181 of the IPC while furnishing false information with intent to cause public servant to use his lawful power to the injury of another person is punishable under Section 182 of the IPC. These offences by virtue of Section 195(1)(a)(i) of the Code can be taken cognizance of by any court only upon a proper complaint in writing as stated in said Section. In respect of matters coming under Section 195(1)(b)(i) of the Code, in **Pushpadevi M. Jatia v. M.L. Wadhawan etc., (1987) 3 SCC 367** prosecution was directed to be launched after *prima facie* satisfaction was recorded by this Court.

16. It has also been laid down by this Court in **Chandra Shashi v. Anil Kumar Verma (1995) 1 SCC 421** that a person who makes an attempt to deceive the court, interferes with the administration of justice and can be held guilty of contempt of court. In that case a husband who had filed a fabricated document to oppose the prayer of his wife seeking transfer of matrimonial proceedings was found guilty of contempt of court and sentenced to two weeks imprisonment. It was observed as under:

"1. The stream of administration of justice has to remain unpolluted so that purity of court's atmosphere may give vitality to all the organs of the State. Polluters of judicial firmament are, therefore, required to be well taken care of to

maintain the sublimity of court's environment; so also to enable it to administer justice fairly and to the satisfaction of all concerned.

2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice. Such persons are required to be properly dealt with, not only to punish them for the wrong done, but also to deter others from indulging in similar acts which shake the faith of people in the system of administration of justice.

\* \* \*

14. The legal position thus is that if the publication be with intent to deceive the court or one made with an intention to defraud, the same would be contempt, as it would interfere with administration of justice. It would, in any case, tend to interfere with the same. This would definitely be so if a fabricated document is filed with the aforesaid mens rea. In the case at hand the fabricated document was apparently to deceive the court; the intention to defraud is writ large. **Anil Kumar is, therefore, guilty of contempt."**

17. **In K.D. Sharma Vs. Steel Authority of India Limited and others (2008) 12 SCC 481** it was observed:

"39. If the primary object as highlighted in **Kensington Income Tax Commrs., (1917) 1 KB**

**486 : 86 LJKB 257 : 116 LT 136 (CA)** is kept in mind, an applicant 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 not an advocacy. It is a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of court for abusing the process of the court."

**18.** In **Dhananjay Sharma Vs. State of Haryana and others (1995) 3 SCC 757** filing of a false affidavit was the basis for initiation of action in contempt jurisdiction and the concerned persons were punished."

**20.** It was held in the judgments referred to above that one of the two cherished basic values by Indian society for centuries is "satya" (truth) and the same has been put under the carpet by the petitioner. Truth constituted an integral part of the justice-delivery system in the pre- Independence era, 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, the values have gone down and now a litigants can go to any extent to mislead the court. They have no respect for the truth. The principle has been evolved to meet the challenge posed by this new breed of litigants. Now it is well settled 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. Suppression of material facts from the court of law, is actually playing fraud with the court. The maxim *supressio veri, expressio falsi*, i.e. suppression of the truth is equivalent to the expression of falsehood, gets attracted.

**21.** In the case in hand, the petitioner No. 2, who is a Government employee has not disclosed that he is serving as Assistant Teacher with the Basic Education Board and further about various criminal cases pending between the parties, hence, a petition sought to be filed in public interest by him cannot be entertained. In our opinion, present petition deserves to be dismissed with special cost.

**22.** The present writ petition is, accordingly, dismissed with cost of ₹ 1,00,000/- which shall be deposited by petitioner No. 2 with the District Legal Services Authority, Bareilly within one month from today. On failure, the Basic Education Officer, Bareilly shall be

entitled to recover the amount from the salary of petitioner No. 2 in five installments of ₹ 20,000/-, as his salary is stated to be about ₹ 70,000/- per month.

**23.** Before we part with the order, we are constrained to note that the instructions received by the State Counsel are not complete and comprehensive. The credentials of the petitioner No. 2 have not been mentioned, though it is part of the record as number of criminal cases have been registered against petitioner No. 2 and he is in litigation with the private respondents. The fact that he is a working Assistant Teacher with the Basic Education Board has also not been mentioned. The Basic Education Board may take appropriate action against petitioner No. 2 for misconduct and violation of service Rules as he is also claiming himself to be the President of petitioner No. 1.

**24.** Let copy of the order passed today be communicated to the Secretary, Basic Education Board, U.P., Lucknow and the Basic Education Officer, Bareilly by the Registrar (Compliance).

Allahabad  
January 24, 2023  
Shiraz/Deepak

(J.J. Munir)  
Judge

(Rajesh Bindal)  
Chief Justice

Whether the order is speaking :

Yes/No

Whether the order is reportable :

Yes/No