

Central Administrative Tribunal
Principal Bench: New Delhi.

RA 55/2016
in
OA 130/2015

Reserved on: 24.08.2016
Pronounced on: 04.10.2016

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Dr. B.K. Sinha, Member (A)

Union of India through

1. The Divisional Railway Manager,
North Central Railway, Jhansi.
2. The Chairman,
Railway Board, Rail Bhawan,
New Dehi-110 001.
3. The Member (Electrical)
Railway Board, Rail Bhawan,
New Delhi – 110 001.
4. The Additional Member (Signal),
Railway Board, Rail Bhawan,
New Delhi-110 001.
5. The General Manager,
North-Central Railway,
Allahabad – 211 012.Review Applicants/
Respondents in OA

(By Advocate: Shri VSR Krishna)

Versus

Pran Nath Mehta
S/o Shri G.M. Mehta Retd.CSI,
Railway Services,
Central Railway, Mathura.Respondent/
Original applicant.

(By Advocate: Shri H.K. Gangwani)

O R D E R

By Dr. B.K. Sinha, Member (A):

Heard the learned counsel for the parties.

2. The instant Review Application has been filed by the review applicants/original respondents against the Tribunal's order dated 05.01.2016 passed by the Tribunal in OA No.130/2015. The review applicants have alleged that while undertaking implementation of the Tribunal's order under review, it had been found that the averments made by the respondent regarding his mental illness for last so many years and getting treatment in India was totally false, misleading and incorrect. The learned counsel for the review applicants submitted that the respondent/original applicant started his Motel business in South Carolina, USA. This information came to light when an official of the Railway Board approached him for getting the necessary details. The original applicant was carrying on business in the name of Bob Mehta with address of Creep Motel Inn, 401, 7th Avenue N, Myrtle Beach, South Carolina-29577. He further submitted that the original applicant had deliberately taken the plea of mental instability in order to mislead this Tribunal. He, further, added that those who come to this Tribunal with unclean hands, they are not entitled to enter equity. The learned counsel for the review applicants further submitted that the long delay in filing the OA could not have been condoned without filing proper application in this regard.

3. The learned counsel for the respondent/original applicant has filed a counter affidavit rebutting the averments made in the RA by the review applicants. He admitted though not in so many words that his stay in USA had no relevance to the facts of the case. He emphatically submitted that he would have been entitled to the same relief which he had got even he had been staying on the moon. He reiterated in his counter affidavit in para 4 that the respondent/original applicant was mentally disturbed in those days and was not getting well. Accordingly, he had applied for VRS. He had consulted doctors in Jullundhar. However, the medical certificates are not traceable at this stage as more than 25 years had passed and the respondent/original applicant had moved to USA and settled there. This matter had already been considered by the Court while examining the merits of the case. He also denied having given any false statement. It is the review applicants who are trying to cover the lapse of 25 years on their part as under:-

“The fact remains that the applicants have done nothing for the last more than 25 years and have taken a shelter under the umbrella of “records not traceable”. Applicants are governed by their rules and regulations, no rule debars a retired employee from going to any part of the world. The applicants are misleading this Hon’ble Tribunal. The respondent has not committed any crime by going to USA.”

4. The only point for our consideration is that whether the original applicant had made a false statement or not.

5. It is apparent from the records that the original applicant had not disclosed the full facts before this Tribunal as it was required to do in the OA. He had deliberately concealed the fact that he had been running a motel business, on believes, flourishing in South Carolina, USA, that made difference by conveying an impression to the Tribunal that he was an aggrieved party.

6. The Hon'ble High Court of Delhi in *H.S. Bedi v. National Highway Authority of India* [RFA 784/2010 decided on 22.01.2016], has bemoaned the fact that the greatest challenge before the judiciary is that of frivolous litigation. The entire judicial system in the country chocked with false claims and such litigants are consuming courts time for wrong cause. As such, these false claims constitute a huge strain on the judiciary system, as a result of which perjury has become a way of life in courts. False pleas are often taken and forged documents are filed indiscriminately in courts. The High Court in this matter relied upon the decision in *Subrata Roy Sahara v. Union of India* [2014 (8) SCC 470] wherein the Hon'ble Supreme Court observed that the Indian judicial system is grossly afflicted with frivolous litigation and ways and means need to be evolved to deter

litigants from their compulsive obsession towards senseless and ill-considered claims. The Supreme Court, discussed the menace of frivolous litigation. Relevant portions of the said judgment are as under:

"191. The Indian judicial system is grossly afflicted, with frivolous litigation. Ways and means need to be evolved, to deter litigants from their compulsive obsession, towards senseless and ill-considered claims.

One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part. He pays for the litigation, from out of his savings (or out of his borrowings), worrying that the other side may trick him into defeat, for no fault of his. He spends invaluable time briefing counsel and preparing them for his claim. Time which he should have spent at work, or with his family, is lost, for no fault of his. Should a litigant not be compensated for, what he has lost, for no fault?"

The Hon'ble High Court also taken note of the decision in *Ramrameshwari Devi v. Nirmala Devi* [2011 (8) SCC 249], wherein the Supreme Court held that in appropriate cases the Courts may consider ordering prosecution, otherwise it may not be possible to maintain purity and sanctity of judicial proceedings. The Supreme Court observed as under:-

*"43..... unless we ensure that wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. **It is a matter of common experience that Court's otherwise scarce and valuable time is consumed or more appropriately, wasted in a large number of uncalled for cases.***

52C....In appropriate cases the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings."

(Emphasis supplied)

The Hon'ble High Court also noted the decision in *Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria* [2012 (5) SCC 370] wherein the Supreme Court observing that false claims and defences are serious problems, held as under: -

"False claims and false defences

81. *False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent."*

7. In *Kishore Samrite v. State of Uttar Pradesh* [2013 (2) SCC 398], the Supreme Court 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 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 overshadowed 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 of 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 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.....*

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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 an abuse of process of 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 an abuse of process of court. A litigant is bound to make "full and true disclosure of facts".....

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 detimento et injuria fieri locupletiorem*, 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 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 court.....

39. **Another settled canon of administration of justice is that no litigant should be permitted to misuse the judicial process by filing frivolous petitions. No litigant has a right to unlimited drought upon the court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be used as a licence to file misconceived and frivolous petitions.....**"

(Emphasis supplied).

8. In *Padmawati v. Harijan Sewak Sangh* [154 (2008)

DLT 411], the Hon'ble High Court held as under:-

"6. The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession,

the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Courts. One of the aim of every judicial system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person.

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9. Before parting with this case, I consider it necessary to pen down that one of the reasons for over-flowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately loose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrong doer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour, since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts."

Hence, where it is found that vital facts have been concealed from the courts and/or wrong facts found pleaded to obtain a favourable decision, it becomes a serious matter, and under no circumstances could the party making false claim be allowed to walk away with the fruits of the same. In fact, the High Court of Delhi in *H.S. Bedi's case (supra)* held as under:-

“15. Conclusions

15.1 Section 209 of the Indian Penal Code, is a salutary provision enacted to preserve the sanctity of the Courts and to safeguard the administration of law by deterring the litigants from making the false claims. However, this provision has been seldom invoked by the Courts. The disastrous result of not invoking Section 209 is that the litigants indulge in false claims because of the confidence that no action will be taken.

15.2 Making a false averment in the pleading pollutes the stream of justice. It is an attempt at inviting the Court into passing a wrong judgment and that is why it has been treated as an offence.

15.3 False evidence in the vast majority of cases springs out of false pleading, and would entirely banish from the Courts if false pleading could be prevented.

15.4 Unless the judicial system protects itself from such wrongdoing by taking cognizance, directing prosecution, and punishing those found guilty, it will be failing in its duty to render justice to the citizens.

15.5 The justice delivery system has to be pure and should be such that the persons who are approaching the Courts must be afraid of making false claims.

15.6 To enable the Courts to ward off unjustified interference in their working, those who indulge in immoral acts like false claims have to be appropriately dealt with, without which it would not be possible for any Court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail.

15.7 Whenever a false claim is made before a Court, it would be appropriate, in the first instance, to issue a show cause notice to the litigant to show cause as to why a complaint be not made under Section 340 Cr.P.C. for having made a false claim under Section 209 of the Indian Penal Code and a reasonable opportunity be afforded to the litigant to reply to the same. The Court may record the evidence, if considered it necessary.

15.8 If the facts are sufficient to return a finding that an offence appears to have been committed and it is expedient in the interests of justice to proceed to make a complaint under Section 340 Cr.P.C., the Court need not order a preliminary inquiry. But if they are not and there is suspicion, albeit a strong one, the Court may order a preliminary inquiry. For that purpose, it can direct the State agency to investigate and file a report along with such other evidence that they are able to gather.

15.9 Before making a complaint under Section 340 Cr.P.C., the Court shall consider whether it is expedient in the interest of justice to make a complaint.

15.10 Once it *prima facie* appears that an offence under Section 209 IPC has been made out and it is expedient in the interest of justice, the Court should not hesitate to make a complaint under Section 340 Cr.P.C.”

9. In the instant case, we do not go to that extent. But it is clear from the above referred decisions of various courts that he who approaches the court must approach with his hands clean. However, we find in the instant case that the intention of the applicant was to create a misleading impression in the minds of the court in which he appears to have partially succeeded. Therefore, we recall the Tribunal’s order dated 05.01.2016 and the Original Application No. 130/2015 is restored to its original number. The Registry is directed to list the Original Application No.130/2015 for re-hearing on_____.

(Dr. B.K. Sinha)
Member (A)

(V. Ajay Kumar)
Member (J)