

Chandrikaprasad Vs. State of M.P. Through Chief Sec. M.P.

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Court : Madhya Pradesh

Decided On : Aug-06-1985

Reported in : AIR1985MP254

Judge : V.D. Gyani, J.

Acts : [Advocates Act, 1961](#) - Sections 35; [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 35

Appeal No. : Civil Appeal No. M.P. No. 648 of 1984

Appellant : Chandrikaprasad

Respondent : State of M.P. Through Chief Sec. M.P.

Advocate for Def. : A.H. Khan, Govt. Adv.

Advocate for Pet/Ap. : K.L. Sethi, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

V.D. Gyanil, J.

1. This petition, filed on 10-9-1984. in this Court at Indore, has had a faster speed from the very beginning as to reach at the stage of final hearing comparatively very

soon, at the instance and insistence of the petitioner's counsel Shri K. L. Sethi, who saw to it that the matter was expedited for hearing as the petitioner was to retire on 31st July, 1985. It was for this reason that the petition was expedited stage to stage so that a person in Government service on retirement may not have a grievance that he was not heard or that justice was not done to him. It was with this anxiety that the matter was taken up.

2. But when the crop was ready for the sickle, the respondents came with an application (LA. No. 3047 of 1985) praying for dismissal of the petition, who could have otherwise resisted the decree of fate itself. The petition even in the midst of a final order, which was being dictated in the open Court on 23rd July, 1985, (up to a certain stage) in the absence of the counsel for the respondent-State, who made his appearance at a later stage and even for this belated appearance there is a bad remark against the Government Advocate. But the appearance when made by the learned Govt. Advocate was coupled with prayer for some time for filing the return but realising the anxiety expressed by the petitioner for disposal of the petition at the earliest possible date before 31st of July, 1985, and it was for this reason that the petition was being repeatedly listed on 24th and 25th so as to accommodate the respondent State in filing their return and producing the relevant record.

3. When the order on merits was halfway and as the Government Advocate appeared, time till next day, i.e. 24-7-1983 was given and on 24-7-85 the learned Government Advocate made an application, being I.A. No. 2937/85, praying for an adjournment for the reasons stated in the said application. Conscious of the urgency and keeping in view that the petitioner was to retire on 31st July, 1985 again adjournment was granted, but only till the next day, i.e. 25th July, 1985 with a direction to the Government Advocate to produce the record. On 25th July, 1985, the learned Government Advocate prayed for some more time to produce the record and time till 31st July, 1983 was granted for production of the record, Shri K.L. Sethi was present on these dates and also on 31st of July, 1985 on which date the Government Advocate submitted an application, being I.A. No. 3047/85, alongwith an Annexure R/I, A certified copy of the order passed in M.P. No. 1624/84 Chandrikaprasad v. State of M.P. by a Division Bench of this Court on

23rd August, 1984, which came as an eclipse to the petition. A copy of this application was received by the learned counsel for the petitioner, Shri K. L. Sethi and when he was called upon to explain as to how was it that a petition, which was dismissed by a Division Bench of this Court at Jabalpur, should again have been filed, within a short period of a fortnight. Shri Sethi stated that he would have to verify the facts, but when the order in M.P, No. 1624/84 was read over to him, as a whole, he again stated that the grounds might possibly be different. So that as it may.

4. On 31st July, 1985, this Court directed the petitioner to remain present in person. Shri K. L. Sethi was also requested to remain present, but he is not. Shri Ashok Sethi, learned counsel appearing for the petitioner, states that in spite of intimation the petitioner has not come. On 31st of July, 1985, the application preferred by the Government Advocate was directed to be listed for orders thereon today, i.e. 6-8-1985, and that is how the matter has come up today. Shri K. L. Sethi is not present, although he was also requested on 31st July, 1985, to remain present.

5. A perusal of the order passed in M.P. No. 1624/84, unfailingly points to the fact that the subject matter of the petition, which was dismissed in motion hearing by the Division Bench of this Court at Jabalpur on 23-6-1984 was and is essentially the same as is the subject matter of the present petition. So much so even the names of the respondents are similar on comparison of respondents, as given in the certified copy of the order in M.P. No. 1624/84. Respondent No, 4 in the said petition was Babulal Moolchand and further on the 17th respondent R.K. Jain in the said petition at Jabalpur, is also the 17th respondent in this petition. Thus, even the order of arranging the respondents remains unaltered. The first three respondents are also in the same order.

6. The order filed by the Government Advocate contains a reference to the petitioner's grievance that three persons, who were not qualified, were promoted to the post of Divisional Accountant in 1975 and it is this very grievance, which was also been ventilated in the present petition with regard to the same three respondents and the same year. There is no doubt with regard to the subject

matter of the petition being the same and no doubt about the array of respondents. However, a very lame excuse was sought to be suggested by Shri K. L. Sethi that the grounds might be different, but the order in M.P. No. 1624/84 and the array of respondents clearly suggest that there is no difference in the nature of the petition, which was filed before this Court at Jabalpur and the one filed here.

7. So far as the petitioner is concerned, the fact that he was to retire on 31st July, 1985 (the Officer in charge of the case, who is present, states that the petitioner has in fact retired from service now). It is not an empty formality for a petitioner to support the petition by securing an affidavit in support of the averments made in the petition. In fact it is the affidavit which lends assurance to the averments and for want of an affidavit no petition as such can be entertained. It is also not merely a formal statement when a petitioner is called upon to state whether a similar matter had been preferred before any court or Tribunal or pending. This statement is required to be supported by an affidavit duly sworn. It should not be forgotten that the system of administration of justice, which essentially depends on and is based upon the sanctity of oath, which is the fountain head of justice, more so in case of writs, where it is essentially and invariably the affidavits alone which are acted upon for granting or refusing the relief. Any attempt at flouting the oath and thereby polluting the course of justice, should be countenanced by any Court.

8. So far as the petitioner is concerned, reference to paragraph 23 of the present petition containing averment regarding similar matter being preferred or pending before this Court or Supreme Court, which has unfortunately been treated to be a formal expression, without taking the connotation of such statements in their true spirit. The paragraph reads :

'The petitioner submits that no such petition on these or similar grounds is pending before the Supreme Court of India or before the High Court at the instance of your Lordships humbly petitioner.'

Facts, when required to be stated, should be placed in their plain form. Dexterity in drafting diction of words is no substitute for the real nature of the connotation of such statement, whether it is pending or has been disposed of and the fact is material and essentially within the knowledge of the petitioner. When a petitioner

makes a statement on oath that no such similar matter is either pending before the High Court or the Supreme Court, he is also equally legitimately expected to know the fact that similar matter had been presented and was either way disposed of and suppression of such a matter, or such a material fact, renders the petitioner liable to prosecution as he is not merely guilty of suppressing a material fact but also makes a false suggestion, as if he has come with clean hands before the Court for the first time, yet suppressing a material fact that a similar prayer made by him for issuance of a writ was rejected by the Court just a fortnight prior to the presentation of this petition. Can one believe, with all the concession for failing human samery, a petitioner serving as a Divisional Accountant, and an Advocate with more than 25 years standing at the Bar, would have forgotten that similar petition had in fact been argued and dismissed by a Division Bench of this Court just a fortnight back. Thereafter the same counsel is on his legs urging and arguing those very points before another Division Bench seeking admission of the matter, thought that the circumstances may be different be it at Jabalpur, Indore or Gwalior, It hardly makes a difference while urging the points as the order shows that it was the learned counsel Shri K.L. Sethi, who had appeared on 23-8-1984 at Jabalpur for seeking admission of that petition and it was the same Shri K. L. Sethi, who appeared on 12-9-1985 before a Division Bench of this Court at Indore, seeking admission of the same petition, which had been dismissed at Jabalpur on 23-8-1984. Is it too much to expect of any counsel to disclose the fact of dismissal of an identical petition by the same petitioner for the same relief and above all the same counsel appearing. Law is noble profession and great calling. Beside attaining and possessing a certain degree of intellectual height a lawyer must possess a sound moral stature he must be a man of honesty, integrity and character, but the facts on revealed in this petition. I am constrained to observe betray the high traditions of this noble profession. It is not so much a matter of concern for the petitioner now, who has already retired on 31st July 85 and shall have no opportunity to come with such petition any more except possible for his pension, if not paid but so far as the Counsel is concerned it is a serious matter. Lawyers and litigants petitioners and respondents ought to know that 'writs' are not a game of hide and seek these who come to seek it must come with clean hands, placing all necessary facts without any attempt either of suppression, and

embellishment it does not pay to be crafty in such matters.

9. On 31st July when Shri Sethi was shown the order D/-23-8-84 passed in M.P. No. 1624/84, he (Shri Sethi K.L.) stated that the grounds of both the petitions might be different, 6th Aug, was therefore, fixed for orders on LA. No. 3047/85. But by the time the matter could be placed on 6th Aug, 85 before this bench, an application for withdrawal of the petition was moved by Shri A.K. Sethi Advocate, the son of Shri K. L. Sethi. The Division Bench on 2-8-85 declined to any order, thereon and directed the petition to be laid before this bench, and that is how the matter has come up again before this Court. This application for withdrawal of petition is accompanied by another application (LA. No. 3089/85, for urgent hearing which reads as follows : --

'It is most humbly submitted on behalf of the petitioner aforesaid as under : --

1. That the petitioner has submitted on above matter along with the stay application.
2. That the connected matter along with the application required urgent hearing by this Hon'ble Court. It is, therefore, humbly prayed that the connected petition along with the application may kindly be ordered to be put before the Hon'ble Court for suitable order on 2-8-85.'

(A. K. Sethi)

Advocate,

Counsel for the petitioner.

It does not stand to reason as to what urgency could there have been for making such an application, and what 'Stay' could have been sought yet the matter was listed before a Division Bench on 2-8-85. However, the Division Bench as stated earlier directed these applications to be placed before this bench today, as the date which had already been fixed in the matter. There was urgency in hearing the matter at the stage of its motion hearing and the same urgency was for withdrawal of the petition, a paradoxical situation which either the petitioner (can he?) or his

Counsel alone, can resolve, the reasons for withdrawal have not been remotely indicated, in the application, the accompanying application for urgent hearing refers to 'Stay'. Contrast the two urgencies in hearing as well as withdrawal of the petition. The reason behind this 'withdrawal' and 'urgent hearing' is a matter of anybody's guess. Order sheet 'dt. 25-6-85 goes to show that on an application (being I.A. No. 1396/85) for early hearing, a Division Bench of this Court directed consideration of the said application by single Bench. Accordingly that application came up for consideration on 9-7-85, and in view of the statements at the bar by the Counsel that the petitioner was going to retire on 31st of July, 1985 the petition was directed to be listed for final hearing and* accordingly the same was listed on 23rd of July, 1985. The urgency of hearing in view of the retirement can well be understood but moving an application for withdrawal along with an application for urgent hearing of the said application for withdrawal is incomprehensible. If anything it unfailingly point to that which is sought to be shielded from the Court.

10. As has been found the present petition in essence is the same which had been dismissed by Division Bench of this Court on 23-8-84 just a fortnight before the filing of the present petition. The suppression of material fact viz. dismissal of an earlier petition, can hardly be overlooked It is nothing short of a fraud played on the Court in order to secure admission of petition. It has never been the practice to seek admission by means not justifiable. What is merely wrong cannot be professionally right. In such circumstances, the counsel appearing at the time of motion hearing of the petition it is rather unfortunate should have thought it proper and desirable to suppress the fact that it was he who had argued an identical petition before a Division Bench at Jabalpur on 23rd August and lost the same. Instead of making such a disclosure if it is suppressed it is certainly not commendable for any member of the bar whose action deserves to be deprecated on no certain terms. This conduct calls for at least a reference to the State Bar Council.

11. The Counsel has certainly fouled the course of justice by polluting the same in as such he became a party to the suppression of a material fact which he definitely knew at the time of argument for admission of the present petition. There is no escape from the conclusion in such circumstances, that the Counsel who

appeared at the time of motion hearing at Jabalpur and at Indore was fully aware of the nature of the claim advanced by the petitioner and the parties against whom that relief was being sought by him. It has already been indicated that even the array of -- respondents their serial order remains the same in both the petitions. The nature of the dispute and the subject matter of both the petitions as indicated by the order passed in MR No. 1624/84, is also identical.

12. The petitioner has sworn an affidavit in support of his petition. It is significant to note the affidavit dt 1-7-84 which was sworn at Indore and attested by a notary public in its cause title the number of the petition is given as M.P. No. 1624/84 and just underneath is the name of the Court 'In the High Court of M.P. Jabalpur and the name Jabalpur is over written by ink as 'Indore'.' The pendency of a petition in this very matter being M.P. No. 1624/84 at Jabalpur is all the more established while this affidavit which this affidavit which has been filed in support of the present petition was got sworn by the petitioner. There are numerous corrections and interpolations in the affidavit which creates a doubt whether the petitioner was apprised of the fact that this affidavit was for the petition pending at Jabalpur or for a fresh petition, to be filed at Indore. Without entering in to any speculation on this point suffice it to say at least the Counsel did know for what purpose place and petition this affidavit was got sworn from the petitioner surprisingly enough this affidavit was got sworn on 1-7-84 at least on that day there could be no purpose for swearing such an affidavit in connection with a petition which was to be presented on 10-9-84. The petition at Jabalpur the number which is given on the affidavit itself M.P. No. 1624/84 and thereafter again in red ink the present petition number has been written M.P, No. 648/84 it would be futile to contend that the Counsel was oblivious or unmindful of the petition which was pending at Jabalpur whom the present petition was presented and argued here at Indore.

13. When affidavits are sworn it is certainly primarily the responsibility of the deponent who swears to certain facts but the role of an Advocate in getting such affidavits sworn can also not be minimised particularly when such suspicious circumstances emerge from the affidavit itself. An Advocate who obtains such an affidavit for any purpose and which is ultimately found to be palpably false and the Advocate is found to be instrumental in getting such an affidavit sworn the

Advocate also exposes himself to adverse criticism. It is also significant to note that the deponent of the affidavit dated 1-7-1984 was identified by Shri K. L. Sethi, Advocate.

14. It is significant to note that the petition which is required to be signed by every page thereof by the petitioner is not so signed by him. It is only the last page No. 15 of the petition which bears the signatures of the petitioner. The averment contained in paragraph 23 as regards the pendency of the similar petition either before this Court or the Supreme Court is supported by an affidavit dated 1-7-1984 whereas the petition is dated 10-9-1984. It is significant to note that the deponent of the affidavit was identified by Shri K. L. Sethi, Advocate before the notary public. Howsoever scheming a mind may be a few traces, are invariably left which go to reveal the truth behind such schemes. Reading the affidavit and the petition together it is difficult to believe whether the deponent was in fact swearing the affidavit in support of the petition. But that does not in any manner minimise the role played by the Advocate in getting such an affidavit sworn. Notwithstanding the corrections and interpolations made in the affidavit the truth can well be seen by reading the reverse of the affidavit against a mirror. This affidavit was in fact in support of an amendment application and the words 'amendment application' have been scored out and are substituted by 'petition'. Similarly in paragraph 2 of the affidavit the number of paragraphs as was originally typed was only eight and which is over-written after corrections as 26. Again in paragraph 3 of the affidavit after the words in support of the amendment application have been over typed and scored out by ink to be added by words 'petition'. It is just to show that the lame excuse advanced by the learned counsel on the 31st of July 1985 ignorance of any such identical petition having been filed at Jabalpur or it is in the scheming mind of the Advocate concerned to make out a case for using the affidavit in support of the petition which he has knowingly done. It is inconceivable that an affidavit could have been got sworn in support of a petition which was proposed to be filed on 10-9-1984. The petition at Jabalpur was dismissed on 23-8-84 and the affidavit sworn was in support of an amendment application. The record of the said petition would reveal the facts. But it does go to show that the Advocate concerned had in fact knowledge of the petition filed and dismissed at Jabalpur even while he was arguing the present petition in Motion Hearing on 12-9-1984. All these facts

abundantly establish that the counsel had knowledge of a previous petition having been filed by the petitioner. It was this affidavit dated 1-7-1984, which was made use of at the time of filing the petition and using the same in support of the petition on the date of Motion Hearing. Thus it cannot be said that the counsel was not aware of a previous petition filed at Jabalpur and dismissed on 23-8-1984. Thus it amply stands out that the counsel played a fraud on the court for getting his petition admitted.

15. So far as the petitioner is concerned the dubious nature of the affidavit makes it inexpedient to order his prosecution. But the scheming mind of the Counsel is all along borne out from the record and such conduct on the part of an Advocate cannot be overlooked.

16. While it is the duty of an Advocate to make the best of his client's case (and in the instant case even the client's case is not served) it is equally his duty to conform to the rules of the game which have been laid down by the noble traditions of the Bar-love for fair play and a deep sense of duty to the profession and to the cause of justice as well. No Advocate should forget that though he is representing a particular client, he is also an officer of the Court and owes duties in the sense that he helps and assists the Court in furtherance of the cause of justice. Shortsighted expediency should not be permitted to subordinate instinctive straightforwardness expected of every counsel. One who betrays these traditions by his improper acts, invites and merits stern and just condemnation and one who upholds such traditions advances the honour of his profession and the best interests of his client. The high ideals and the noble tradition of the profession, call not only for the ability learning and probity but also fair and high-minded and unselfish obedience to the ethical truth, that a lawyer as an Officer of the Court is also under an obligation to add and assist and not to hamper or thwart the administration of justice, as has been done by Shri K.L. Sethi, an Advocate, who suppressed the material fact of dismissal of an earlier petition. It would be in the fitness of things that the matter be brought to the notice of the State Bar Council for taking suitable action against the Advocate concerned, for 'loyalty is still the same, whether it win or lose the game.'

17. The Registrar is directed to send a copy of this order to the Secretary of the State Bar Council at Jabalpur and a complaint be lodged with the State Bar Council for the purpose. The record of this petition is directed to be kept in safe custody.

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