

PETITIONER:
ALL INDIA STATE BANK OFFICERS FEDERATION THROUGH ITS PRESIDENT

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT 16/04/1990

BENCH:
RANGNATHAN, S.
BENCH:
RANGNATHAN, S.
VERMA, JAGDISH SARAN (J)

CITATION:
1990 SCR (2) 493 1990 SCC Supl. 336
JT 1990 (2) 243 1990 SCALE (1) 40

ACT:
Constitution of India 1950: Article 32--Writ
Petition--Reckless statements and deliberate
mis-statements--Making of--Court records strong disapproval.
Practice and Procedure: Writ Petitions--Simultaneous
filing of in various High Courts--A practice which has to be
discouraged.

HEADNOTE:

The All India State Bank Officers' Federation filed a Writ Petition in this Court on the 24th April, 1989 seeking to impugn a new promotion policy initiated by the State Bank of India. The petition was supported by an affidavit of the President of the Federation affirming the contents of the petition to be true to his personal knowledge, and submitting in paragraph 9(mm) of the petition that the petitioners were approaching this Court in great haste as the Bank was moving with great speed to implement its new promotion policy and was likely to constitute a Departmental Promotion Committee, and declare the results. In para 4 it was submitted that the petitioners had not filed any other similar petition either in this Court or any other High Court.

When the writ petition came up for admission before a Bench of this Court on April 26, 1989, counsel for the State Bank of India was present and accepted notice on behalf of the Bank.

The Writ Petition was contested by the Bank which submitted in its counter affidavit that the statement in para 4 of the petition in support of the writ petition was false, and pointed out that the Federation through its Deputy General Secretary had filed a Writ Petition in the High Court of Andhra Pradesh along with an application seeking stay of the promotion policy, and that the High Court admitted the Writ Petition on April 13, 1989 but rejected the application for interim stay, and further pointed out that another petition had been filed by the State Bank of India Officers' Association (Karnataka) in the Karnataka High Court. A second objection as regards the maintainability of the

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petition was raised in para 3 that since the promotions had already been made they could not be disturbed and that no

steps were taken to implead those officers, who would be directly affected as a result of the prayer made in the writ petition.

To the aforesaid objections raised by the Bank the petitioner filed a rejoinder supported by an affidavit of the President of the Federation, submitting that the deponent did not have any knowledge of the writ petition filed in the High Court of Andhra Pradesh, and that as soon as it came to his knowledge it was withdrawn. and that the petitioners did not know the names of all the 58 candidates who had been promoted favoured.

When the Writ Petition was taken up for further hearing on April 5, 1990, counsel for the Bank objected to the maintainability of the writ petition on the grounds of suppression of material facts and abuse of the process of court. The Court directed the petitioner to file a better affidavit, and the petitioner Federation filed a better affidavit explaining the correct position and tendering an unqualified apology for the mis-statements in the earlier affidavit, but still reiterated that they came to know of the writ petition in the Andhra Pradesh High Court only on April 23, 1989 and that, at the time of the preliminary hearing, it was brought to the notice of the Court by the Respondent's counsel.

The respondent pointed out that the statements made in the rejoinder filed by the petitioners that they were not aware of the names of the promoted officers till November, 1989 was a total falsehood because; (i) the writ petition filed in the Karnataka High Court made all of them parties to the writ petition, and (ii) the names of the promoted officers were listed in the fortnightly bulletin of the State Bank Officers' Association dated 1st May, 1989 carrying a message of congratulations to all of them.

Disposing of the preliminary objections and adjourning the writ petition for further hearing on merits, the Court,

HELD: 1. Apart from mis-statements in the affidavits filed before this Court the petitioner federation has clearly resorted to tactics which can only be described as abuse of the process of court. The simultaneous filing of writ petitions in various High Courts on the same issue though purportedly on behalf of different associations of the Officers of the Bank, is a practice which has to be discouraged. [500H; 501A]

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2. An attempt was made to obtain a stay in the Andhra Pradesh High Court and when that attempt failed the writ petition here was filed. In this the petitioners were able to obtain only an order that any "promotions made during the pendency of the petition would be subject to the decision in the writ petition. But having obtained this order on April 26, 1989, it is curious and inexplicable that an affiliated association should have made an application on April 27, 1989 in the Karnataka High Court praying for a stay of the promotions. These are only tactics that will be indulged in by a chronic and compulsive litigant and not by a Federation like the petitioner. [501C-D]

3. One expects that officers fight their battles fairly and squarely and not stoop low to gain what can only be temporary victories by keeping away material facts from the court. [501E]

4. It is common knowledge that, of late, statements are being made in petitions and affidavits recklessly without proper verifications not to speak of dishonest and deliberate misstatements. Strong and emphatic disapproval of the conduct of the petitioners in this case is recorded in the

hope that this will be a lesson to the present petitioners as well as to other litigants and that atleast in future people will act more truthfully and with a greater sense of responsibility. [501F-G]

5. The Court does not wish to penalise the various officers who may suffer as a consequences of the new policy, which they wish to challenge, and decline them an opportunity to put forward their grievances before the Court, for the mis-statements or wrong steps taken by the officers of the Federation in their over-anxiety to get quick interim relief. [502B-C]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (Civil) Nos. 507 and 1260 of 1989.

(Under Article 32 of the Constitution of India).

M.K. Ramamurthy, Rajinder Sachhar, Dr. Francis Julion, Ms. Aruna Mathur, A. Mariarputham, Ms. S. Dikshit, S. Vasudevan and Pradeep Misra for the Petitioners.

For the Respondents--Nemo.

The following Order of the Court was delivered by
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S. RANGANATHAN, J. This order will dispose of a preliminary objection raised on behalf of the respondents that these writ petitions should be dismissed because the petitioners have suppressed certain material facts from this Court and have also tried to abuse the process of court in the manner hereinafter appearing.

Writ Petition No. 507 of 1989 has been filed by the All India State Bank Officers' Federation (hereinafter called 'the Federation') through its President. It was filed in this Court on 21st April, 89 and was supported by an affidavit of Umed Singh, President of the Federation, affirming the contents of the petition to be true to his personal knowledge. By this writ petition the Federation seeks to impugn a new promotion policy decided upon by the State Bank of India (hereinafter called 'the Bank'). In paragraph 9(mm) of the petition it is stated that the petitioners are approaching this Court in great haste as the Bank is moving with great speed and is likely to constitute Departmental Promotion Committees and declare the results of the interviews in implementation of the new promotion policy within the next two or three days. In the affidavit of Umed Singh, referred to earlier, it has been stated in para 4 that the petitioners have not filed any other similar writ petition in this Honourable Court or any other High Court.

In the counter affidavit filed on behalf of Bank, it is stated that the statement in paragraph 4 of the petition in support of the writ petition is false. It is pointed out that the Federation through its Deputy General Secretary had filed Writ Petition No. 5286 of 1989 in the High Court of Andhra Pradesh at Hyderabad along with an application No. 6969 of 1989, seeking stay of the promotion policy. On 13.4.89 the Andhra Pradesh High Court admitted the writ petition but the learned judge rejected the application for interim stay observing "that he was prima facie satisfied that the selection is going on according to a fair procedure and that there is no need to stay any of the interviews or the appointment". It is further pointed out that another petition has also been filed by the State Bank of India Officers' Association (Karnataka) having its office at Bangalore in the Karnataka High Court, being Writ Petition No. 7848 of 1989. It is, therefore, submitted that the

petitioners have suppressed from this Court the material fact that a writ petition has already been filed by them in the Andhra Pradesh High Court and that an application for stay had been made and rejected by the said court. A second objection to the

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maintainability. of the petition raised on behalf of the Bank in paragraph 3 of its counter affidavit was that since promotions had already been made they could not be disturbed "as the promoted officers have not been made parties". It is common ground that 58 officers had been promoted w.e.f. 24th April, 89 but no steps were taken to implead these officers, who would be directly affected as a result of the prayer made in the writ petition.

To these objections, a rejoinder was filed on behalf of the petitioners, supported again by an affidavit of Umed Singh on the 23rd of October, 1989. The two objections raised by the Bank were sought to be refuted in the following manner:

"1. That the contents of para 1 are denied and it is reiterated that the writ petition is maintainable as there is clear violation of fundamental rights guaranteed to the petitioners. The writ petition filed in the Andhra Pradesh High Court has since been withdrawn as per the undertaking given to the Supreme Court during arguments on 24.4.89. The deponent had no knowledge of the writ petition filed before the High Court of Andhra Pradesh, hence as soon as it came to his knowledge the same has been withdrawn. Even otherwise the deponent understands that in the said writ petition the stay of interviews was prayed and the same was declined on representation made by the respondent bank. It is indeed regrettable that even before Hon'ble High Court the bank made incorrect statements. A perusal of the order of High Court would show the same. Regarding the question of making such employees who have been promoted as a party respondent, it is submitted that firstly it is the promotion policy which had been challenged being arbitrary, discriminatory and framed in gross violation of the prescribed procedure and provisions of law, secondly the petitioners even today do not know the names of all such 58 candidates who have been promoted favoured." (emphasis added)

It may be mentioned here that Writ Petition No. 507 of 1989 came up for admission before a Bench of this Court on 26th April, 1989. Apparently, the counsel for the State Bank of India was present and accepted notice on behalf of the bank. The Bench passed the following order:

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"Issue notice, Mr. S.S. Sharma, learned counsel accepts notice on behalf of the State Bank of India. Counter affidavit shall be filed within four weeks from today. Reply, if any, shall be filed within two weeks thereafter, the matter will be placed for final disposal on 24.10.1989 subject to overnight part-heard. The promotion if given in the meantime will be subject to the decision in the writ petition. Mr. K.K. Venugopal, learned counsel states that the writ petition which has been filed before the High Court will be withdrawn."

The Writ Petition came on for hearing before us on 5th April, 1990. Sri G. Ramaswamy, counsel for the Bank, put the above objections in the forefront as preliminary objections. After hearing him and the counsel for the petitioner, we directed the petitioner federation to file a better affidavit explaining the correct position. In compliance with the direction given by us, another affidavit has been filed by

Sri Umed Singh. In this affidavit, again, although purporting to "tender an unqualified apology" for the misstatement in the earlier affidavit, the deponent reiterated "that he did not know on the date of swearing of the affidavit on 21.4.89 that some other office bearer of the petitioner federation has filed such a petition". He claims to have come to know of it only on the 23rd April, 1989 from a telephonic conversation with the Deputy Secretary and wishes to take credit for the fact that he at once informed his counsel about it who in turn brought it to the notice of the Court at the time of the preliminary hearing on 26th April, 1989. The truth of these allegations is refuted on behalf of the Bank. It is submitted that the counsel for the petitioner did not, even at the time of hearing on 26.4.89, bring to the notice of this Court the fact that he had filed a petition in the Andhra Pradesh High Court. On the other hand, it is claimed, it was the counsel for the Bank who was present and who took notice on behalf of the Bank, that brought to the notice of the Court that the petitioner had already moved the Andhra Pradesh High Court in regard to the same relief and it was only thereafter that the counsel for the petitioner made a statement that the petitioner would withdraw the petition filed in the Andhra Pradesh High Court. Even this, it is pointed out, they did not do immediately as stated in Umed Singh's affidavit for the said petition was withdrawn only much later on 27th of July, 1989.

On behalf of the Bank it is also pointed out that the statement made in the rejoinder filed by Umed Singh, supported by his affidavit,
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that the addresses of the 58 promotees was not known to the petitioner is again a total falsehood as is demonstrated by two circumstances. In the first place, in the writ petition filed in the Karnataka High Court, the petitioner there has joined all the 58 officers as parties and an application was moved before the said High Court on 27th April, 89, seeking stay of promotion of the said respondents. That apart, on 1st May, 89, a fortnightly bulletin issued by the State Bank of India Officers' Association (Mumbai circle), which is admitted to be one of the associations affiliated to the petitioner Federation, carries a message of congratulations to all the 58 officers, who had been promoted w.e.f. 24th April, 89. The names of all the 58 officers so promoted has been set out in this bulletin.

In this state of the record, learned counsel for the Bank strongly urges that we should dismiss the writ petition straightaway on the ground that the petitioner has not come to Court with clean hands.

We have heard learned counsel on both sides at length. There is no doubt left in our minds that the petitioner has not only suppressed material facts in the petition but has also tried to abuse judicial process. The explanation that the President of the Federation when he filed the writ in this Court on 21st April, 89, was not aware that a petition had been filed in the Andhra Pradesh High Court (repeated for a second time in the affidavit of 5th April '90) is, in our opinion, is totally unacceptable. Admittedly the federation was considerably agitated by the new promotion policy. The matter was considered to be very urgent and the federation was too keen to obtain a stay of implementation of the policy which, it feared, the Bank might do any day. In this situation, not even the most gullible of persons would be credulous enough to accept the explanation that the Deputy General Secretary of the Federation had not apprised the President of their failure to obtain the stay order from the

Andhra Pradesh High Court. It is totally unbelievable that between 13.4.89, when the interim application in the Andhra Pradesh High Court was rejected and 21.4.89 when the writ petition was filed, the President was not aware of what had happened in the High Court. It is deplorable that such an explanation should have been not only put forward in the original rejoinder but should have been repeated again in the latest affidavit. The petitioner had, in our opinion, deliberately suppressed from the petition this crucial and important fact. As to the credit sought for having brought this fact to the notice of the Court on 25.4.89, the circumstances suggest that perhaps they would not have brought it to the notice of the court at all had not counsel on behalf of the Bank been present, to receive notice

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when the matter was moved for admission on 26.4.89. whether, as asserted by the counsel for the petitioner, the petitioner considered it prudent, in view of the presence of the Bank's counsel, to volunteer at the time of the said hearing the information that a petition had been filed in the Andhra Pradesh High Court and to offer an undertaking that it would be withdrawn or whether, as alleged in a "statement of facts" placed before us by Sri S.S. Sharma, the learned counsel for the Bank who appeared at the hearing, even this information had to be supplied to the Court by the Bank, is a controversy into which we need not enter. We shall proceed on the assumption that the statement made by the counsel for the petitioner is correct, but even that does not explain why a reference to the writ petition in the High Court was not made in the writ petition as it had to be made. The statement in the affidavit of Umed Singh that no petition had been filed in any High Court was clearly and plainly false.

It is equally clear that the statement made in the rejoinder affidavit that "till today (i.e. 23rd October, 1989) the petitioner federation is not aware of the names of the promoted officers" is again an incorrect statement. These officers had been impleaded in the interim application for the relief sought against them in the Karnataka High Court as early as 27.4.89. That apart the federation could not have been unaware of the contents of the bulletin issued by the Mumbai circle of the SBI Officer's Association issued on 1.5.89. There is no doubt that the petitioner did not deliberately implead the 58 promoted officers. Sri Sachhar, for the petitioner, sought to contend that these 58 officers may be proper parties but not necessary parties and he referred us to the judgments of this Court in *The General Manager, South Central Railway, Secunderabad and Another v. A.V.R. Siddhantti and Ors.*, [1974] 4 S.C.C. 335 and *Col. D.D. Joshi & Ors. v. Union of India & Ors.*, [1983] 2 S.C.C. 235. We are not here concerned with the question whether these officers were necessary or proper parties and, indeed, this issue is no longer alive as, subsequently, the petitioner itself has undertaken to implead these 58 officers and notices have been issued to them in both the writ petitions. What we are concerned here with is the statement, in the rejoinder affidavit that the Federation was not aware of the names of the 58 officers till November 1989 which, in the circumstances is a clear misstatement.

Apart from misstatements in the affidavits filed before this Court, the petitioner Federation has clearly resorted to tactics which can only be described as abuse of the process of court. The simultane-

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ous filing of writ petitions in various High Courts on the

same issue though purportedly on behalf of different associations of the Officers of the Bank, is a practice which has to be discouraged. Sri Sachhar and Sri Ramamurthy wished to pinpoint the necessity and importance of petitions being filed by different associations in order to discharge satisfactorily their responsibilities towards their respective members. We are not quite able to appreciate such necessity where there is no diversity but only a commonness of interest. All that they had to do was to join forces and demonstrate their unity by filing a petition in a Single Court. It seems the object here in filing different petitions in different Courts was a totally different and not very laudable one. Again an attempt was made to obtain a stay in the Andhra Pradesh High Court and when that attempt failed the writ petition here was filed. In this the petitioners were able to obtain only an order that any promotions made during the pendency of the petition would be subject to the decision in the writ petition. But, having obtained this order on 26.4.89, it is curious and inexplicable that an affiliated association should have made an application on 27.4.89 in the Karnataka High Court praying for a stay of the promotions. These are only tactics that it will be indulged in by a chronic and compulsive litigant and not by a federation like the petitioner.

We have set out the facts in this case at some length and passed a detailed order because we are deeply grieved to come across such conduct on the part of an association, which claims to represent high placed officers of a premier bank of this country. One expects such officers to fight their battles fairly and squarely and not to stoop low to gain, what can only be, temporary victories by keeping away material facts from the court. It is common knowledge that, of late, statements are being made in petitions and affidavits recklessly and without proper verification not to speak of dishonest and deliberate misstatements. We, therefore, take this opportunity to record our strong and emphatic disapproval of the conduct of the petitioners in this case and hope that this will be a lesson to the present petitioner as well as to other litigants and that atleast in future people will act more truthfully and with a greater sense of responsibility.

The question that now remains to be considered is whether the petition is liable to be dismissed for this conduct of the President of the Federation. Sri Rajendra Sachhar, appearing on behalf of the petitioners, sought to get over the Bank's objections by addressing certain technical arguments. He submitted that even if Writ Petition No. 507/ 89 was liable to be dismissed for mis-statement and suppression there

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would be no reason to dismiss C.W.P. No. 1260 of 1989 which has been filed by another association of the same officers. He also sought to contend that, since it had been brought to the notice of this Court on 26.4.89 that a petition had been filed in a High Court and that it was being withdrawn, the order passed by this Court on 26.4.89 should be taken as having condoned any mis-statement or mis-conduct or defects in the writ petition. We are not inclined to accept these submissions. However, it is not necessary to discuss this aspect further as we do not wish to penalise the various officers who may suffer as a consequence of the new policy, which they wish to challenge, for the misstatements or wrong steps taken by the Officers of the federation perhaps, in their over-anxiety to get quick interim relief. We do not wish to decline them an opportunity to put forward their

grievances before the court by dismissing these writ petitions on the preliminary objections raised by the Bank. In fact, we should like to place on record our appreciation of the stand taken by Sri G. Ramaswamy, learned counsel for the Bank in this respect. He fairly stated that, as he is appearing for a public sector undertaking, he is quite prepared to contest the writ petitions on their merits and that his preliminary objections were primarily intended to bring to our notice the conduct of the petitioners in this case. We are glad he did it as this was a matter which needed serious notice. We should like to record our dis-approval of the way in which the proceedings have been conducted on behalf of the Federation.

However, as mentioned above, we overrule the preliminary objections and will proceed to dispose of the writ petitions on their merits. The Writ Petitions are adjourned, as per separate order, to 17.7.90 for further hearing.

N.V.K.

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