



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Civil Writ Petition No. 620/2020

Geeta Devi W/o Sugna Ram, Aged About 39 Years, Near
Railway Station, Krishna Colony, Bilara, District Jodhpur.

----Petitioners

Versus

1. State Of Raj., Through The Secretary, Department Of Local Self Government, Secretariat, Jaipur.
2. Deputy Director (Regional), Department Of Local Self Government, Jodhpur.
3. The Executive Officer, Municipal Board, Bilara, District Jodhpur.

----Respondents

For Petitioner(s)	:	Mr. Devendra Singh Rathore
For Respondent(s)	:	Mr. Rajesh Parihar

JUSTICE DINESH MEHTA

Order

Reportable

28/03/2023

I.A. No.01/2023

1. The instant application has been filed by the respondent – Municipal Board, Bilara interalia praying that the interim order dated 14.01.2020 passed by this Court be recalled.
2. Arguing said application, Mr. Rajesh Parihar, learned counsel appearing for the respondents highlighted that the petitioner alongwith four other persons had earlier preferred a joint writ



petition being S.B. Civil Writ Petition No.13679/2019 and the same was listed on 13.09.2019.

3. He contended that a Co-ordinate Bench of this Court considered petitioner's case and simply issued notice without granting any interim order. He submitted that on the very same day, two cases of Ajay Hans (SBCWP No.13544/2019) and Atul Kalla (SBCWP No.13604/2019) challenging the very same impugned order were listed, in which detailed orders were passed and interim orders were granted, whereas in petitioner's case, only notices were ordered to be issued.

4. Learned counsel for the applicant – respondent State brought to the Court's notice a fact that the petitioner(s) withdrew said writ petition (No.13679/2019) on 10.01.2020, without even informing him (the counsel for the respondents) who had not only filed his power but had also filed reply.

5. Thereafter, each of the petitioners filed separate writ petitions and procured interim order from this Court making a submission that the controversy involved in the present matter is akin to one involved in Jitendra Kumar Vs. State of Rajasthan & Ors. (SBCWP No.15048/2019).

6. He submitted that had the petitioner's case been identical, Co-ordinate Bench of this Court would have granted interim order in petitioner's favour on 13.09.2019, itself, but the same was not consciously done and narrating the controversy in all the cases separate orders were passed. Despite knowing it well, the petitioner withdrew her writ petition (SBCWP No.13679/2019) and filed the present writ petition with a clear intention to mislead this Court and to secure an interim order.





7. Mr. Devendra Singh, learned counsel for the petitioner responding to the arguments advanced by learned counsel for the respondent-State invited Court's attention towards note No.1 in the 'Notes' and submitted that the petitioner has mentioned the factum of filing of the earlier writ petition and its withdrawal and therefore, there is no concealment on the part of the petitioner.

8. Heard learned counsel for the parties and perused the material available on record.

9. In order to ascertain the veracity of assertions made by Mr. Parihar, the Court summoned the original record of writ petitions No.13679/2019 (filed by the petitioner); 13544/2019 (Ajay Hans); and 13604/2019 (Atul Kalla). Wading through the records, this Court found that on 13.09.2019, Atul Kalla's petition being SBCWP No.13604/2019 was listed at Serial No.217 of the daily causelist. Co-ordinate Bench of the High Court noticed the submission made by learned counsel in detail and being prima-facie convinced, passed an interim order in favour of Atul Kalla. Case of Ajay Hans (SBCWP No.13544/2019) was listed at Serial No.214 and noticing the similar submission, interim order came to be passed but in the writ petition filed by the petitioner (through the same learned counsel), the Co-ordinate Bench simply issued notices without granting any interim relief.

10. The petitioner (being one of the petitioners in SBCWP No.13679/2019) was well aware that the Court has only issued notices and has not granted any interim relief for the reasons mentioned in the proceedings of 13.09.2019.

11. It appears that other candidate Jitendra Kumar later on filed a writ petition (SBCWP No.15048/2019) in which an interim order





came to be passed (by another Hon'ble Judge) and that perhaps, prompted the petitioner to file a fresh petition.

12. This Court is shocked rather pained to realise the extent to which the petitioner and her counsel can traverse. The petitioner having failed to obtain interim order in her earlier writ petition, being S.B. Civil Writ Petition No.13679/2019 from Co-ordinate Bench of this Court (on 13.09.2019), when learnt that interim order has subsequently been passed in the case of Jitendra Kumar (SBCWP No.15048/2019), surreptitiously withdrew her writ petition (SBCWP No.13679/2019) and filed the instant writ petition on the very same day i.e. 10.01.2020.

13. On 14.01.2020, learned counsel for the petitioner has made an assertion that the issue involved in the present writ petition is akin to one involved in the case of Jitendra Kumar; S.B. Civil Writ Petition No.15048/2019 and as usual, believing the statement made by learned counsel for the petitioner at Bar, this Court proceeded to pass interim order in instant writ petition as well.

14. The said assertion made by counsel for the petitioner in absence of disclosure of the fact that a writ petition was earlier filed and withdrawn to the Court cannot be accepted. The petitioner has not placed copy of the order dated 10.01.2020 in order to avoid the attention of the Court.

15. The explanation given by Mr. Devendra Singh that a note has been made about filing of earlier writ petition being SBCWP No.13679/2019 is of little avail. Because, such fact was to be asserted in the memo of the writ petition by the petitioner(s) supported by an affidavit. And then, the Court is not expected to go through the notes, while hearing a matter.





16. Not only this, an empty formality of withdrawing and filing of fresh writ is impermissible in law, unless there is a material change in the facts and circumstances.

17. Legally, withdrawal of earlier writ petition (No.13679/2019) simplicitor does not entitle her to maintain a fresh writ petition.

18. Absence of assertion in the memo of writ petition in this regard is also a serious matter. A simple note put under the head 'Notes' signed by counsel for the petitioner is not enough for maintainability of the writ petition.

19. This Court is further constrained to observe that counsel for the petitioner having made a note was required to go through the memo of earlier writ petition filed by the petitioners (SBCWP No.13679/2019) and then, advise the petitioner.

20. Striking feature is, that not only there is no change in facts but also in the pleadings when compared to the earlier writ petition.

21. The writ petition has been withdrawn, solely with a view to hoodwink the Court by filing a fresh writ petition.

22. Counsel for the petitioners has failed to point out even a single change in the facts and circumstances. As a matter of fact, no new fact has emerged for which, the instant writ petition has been filed.

23. On comparative reading of the writ petition which was earlier filed by the petitioners (SBCWP No.13679/2019) with the instant writ petition, this Court finds that both of them are ad-verbatim the same, even font and typographical errors are the same. Instant writ petition is exact 'copy and paste' of the earlier writ petition apart from two points (i) Name of the counsel and (ii) So





called Note No.1, otherwise even typographical errors are the same. To further point out the similarities, para No.4 of both the petitions mentions dates as 31.07.2018 and 22.08.2018 and in both the writ petitions, corrections in hand have been done with initials. Apart from above two, there is not even an iota of change.

24. It will be appropriate to reproduce the submission made by the then counsel at the time of withdrawal of the earlier writ petition on 10.01.2020.

“Learned counsel for the petitioners seeks permission to withdraw the present writ petition with liberty to file fresh writ petition with new facts and particulars.”

25. The petitioner had sought permission to get the matter listed in supplementary cause list to withdraw the writ petition without even informing Mr. Rajesh Parihar, learned counsel who had by then, filed his reply in the writ petition. Even more surprising is the fact that while withdrawing the earlier writ petition (SBCWP No.13679/2019), an impression was given that the petitioners want to bring in ‘new facts and particulars’ in order to seek leave to file a fresh writ petition.

26. This Court has no hesitation in concluding that the petitioner and her counsel have played a fraud upon the Court by filing a fresh writ petition on the same facts, grounds and reliefs, faced with a situation that the Co-ordinate Bench of this Court did not deem it appropriate to grant *ex-parte* interim order while granting interim order in other two cases clearly spelling out the distinction.

27. As a necessary corollary of the discussion foregoing, the application seeking recalling of the order dated 14.01.2020





deserves to be and is hereby allowed. The order dated 14.01.2020 is hereby recalled.

28. In view of the conduct of the petitioner and her counsel, not only the interim order is liable to be recalled even, the writ petition deserves to be dismissed on the ground of an attempt to mislead the Court and also being barred by principles of *res-judicata*.

29. By misleading the Court, the petitioner has procured interim order and continued in services for more than three years and illegally burdened the public exchequer.

30. The petitioner shall pay a cost of ₹50,000/- to the respondent Municipal Board, Bilara. The Board shall be free to recover the same from the petitioner's deducted/deposited amount in accordance with law. The amount so recovered will be utilised by the Board for construction/renovation of some Public Toilet for females.

31. Writ petition so also stay petition stands dismissed.

32. While recording displeasure about the conduct of learned counsel, no action is being taken against him with a hope that he would take care in future.

(DINESH MEHTA),J

53-Arvind/-