SUPREME COURT OF INDIA

Amar Singh

Vs.

Union of India & Ors.

WP.(Civil)No.39 of 2006

(G.S.Singhvi and Asok Kumar Ganguly,JJ.,)

11.05.2011

JUDGMENT

G.S.Ganguly,J.,

1. In this writ petition, filed under Article 32, the petitioner is seeking to protect his fundamental right to privacy under Article 21 of the Constitution of India. The petitioner's case is that on the basis of his information from various sources, he had learnt that the Government of India and the Government of National Capital Region of Delhi, being pressurised by the respondent No.7, had been intercepting the petitioner's conversation on phone, monitoring them and recording them. The petitioner had been availing of the telephone services of M/s Reliance Infocom Ltd., impleaded herein as respondent no.8. He further referred to similar cases of interception of phone conversations of other people, including some of the country's leading political figures, who were using services provided by M/s Reliance Infocom Ltd. and other service providers. Such interception of conversation, according to the petitioner, amounts to intrusion on the privacy of the affected people, and is motivated by political ill will and has been directed only towards those who are not aligned with the political party in power at the Centre. He submitted that this infringement of his fundamental rights was symptomatic of the erosion of the democratic values in the country. He prayed that the Court may declare the orders for interception unconstitutional and therefore void, and initiate a judicial inquiry into the issuance and execution of these orders, and prayed that damages be awarded to him. It was further prayed that all the telecom service providers including M/s. Reliance Infocom, along with all the others who had been impleaded, be directed to disclose all the relevant details with respect to the directions of interception issued to them by the authorities, and this Court may lay down guidelines on interception of phone conversations in addition to the ones laid down by this Court in its judgment in *People's Union for Civil Liberties (PUCL) v. Union of India and Another*[1].

2. The petitioner's case is that a request dated 22nd October, 2005 was issued from the office of the Joint Commissioner of Police (Crime), New Delhi to the Nodal Officer, Reliance Infocom Ltd., Delhi, for the interception of all the calls made from or to the telephone numbers of the petitioner. This request was subsequently followed by an order dated 9th

November, 2005, from the Principal Secretary (Home), Government of National Capital Territory of Delhi, authorising the said request. The case of respondent no. 8 is that the said orders were acted upon by it, and the petitioner's conversations were intercepted. However, the Union of India, and the National Capital Territory of Delhi denied the allegations. They submitted that said orders annexed to the petition, purporting to be issued by the Joint Commissioner of Police, (Crime), New Delhi, and the Principal Secretary (Home), Government of National Capital Territory of Delhi are fabricated with forged signatures and they are not genuine. Alleging forgery, a criminal case in that respect had already been initiated.

3. In the course of the hearing, by filing an interlocutory application (no.2 of 2006) the petitioner submitted that the recordings of the said conversations had been made available to some journalists/news agencies. In view of these submissions, this Court directed the electronic and the print media not to publish any part of the said conversations, vide Court's order dated 27th February, 2006.

4. Various applications for intervention were preferred, especially by civil society groups. These applications were allowed. The interveners argued that the conversations by the petitioner were mostly made in his capacity as a public functionary and, therefore, were public in nature, and the citizens of the country have a right to know their contents under Article 19(1)(a) of the Constitution. A prayer was therefore made by them to vacate the order of injunction.

5. In this matter pursuant to the direction of this Court, a detailed affidavit has been filed by one R. Chopra, Joint Secretary (Home Department) of the Government of National Capital Territory of Delhi, in which it has been clearly stated that the Principal Secretary (Home) in the Government of National Capital Territory of Delhi, is authorized by the Lieutenant Governor of Delhi to exercise powers to order interception of phone conversation for a period specified in such orders in accordance with the provisions of Section 5 of Indian Telegraph Act, 1885 (the said Act). From the order of authorization dated 10th December, 1997, it appears that the same was issued pursuant to the judgment of this Court dated 18th December, 1996 in People's Union for Civil Liberties (supra) and also Section 5 (2) read with the Government of India, States Ministry Notification No. 104-J, dated 24th October, 1950.

6. In the said affidavit it has been clearly stated by the deponent that no request for interception is examined by the Home Department unless it is accompanied by a confirmation that the same has the prior approval of the Commissioner of Police, Delhi. It was clarified that no Joint Commissioner of Police or police officer of any other rank can directly request for an interception, without first obtaining a prior approval of the Commissioner of Police. It was also clarified that no phone interception order is suo motu issued by the Principal Secretary (Home) without a request from the Government agency. Majority of interception requests, received by the Principal Secretary (Home), are from Delhi Police.

7. In respect of the petitioner's telephone no. (011 39565414), the deponent specifically stated that no order for interception of the said number was ever issued either on 9th November, 2005, or earlier, or for that matter, even later. The categorical denial in this respect in the said affidavit is set out below.

> "(v)...This categorical denial is being submitted after careful scrutiny of all the relevant records. Also it is respectfully stated on the basis of careful scrutiny of records, that no request for interception of the petitioner's telephone number 011 39565414 was received by the Principal Secretary (Home)/respondent no. 4 from any Police Officer or for that matter any agency, governmental / police or otherwise.
>
> (vi) In view of this, the order bearing no. F.5/1462/2004 - HG dated 9.11.2005, a copy of which is appended to the writ petition at page 28 as Annexure B, and having an endorsement No. F. 5/1462/2004 - HG/7162 of the same date, and purportedly issued under the signature of the then Principal Secretary (Home), is forged and fabricated document."

8. An affidavit has also been filed on behalf of Union of India by one Mr. J.P.S. Verma, Deputy Secretary, Ministry of home affairs, North Block, New Delhi, in which reference was made to certain orders passed by this Court in this petition, and thereafter, reference was also made to the judgment of this Court in People's Union for Civil Liberties (supra), and the various provisions of Indian Telegraph Act. The Central Government made it very clear that it was fully aware of the sensitivity relating to the conversations on telephone, and the privacy rights thereon. Reference was also made to technological measures to avoid unauthorised interceptions and the changed security scenario.

9. In this matter an additional affidavit has been filed by Shri Alok Kumar, Deputy Commissioner of Police, Headquarters. In that affidavit it has been stated, that on inquiry by the Additional Police Commissioner (Crimes), it was discovered that the purported order of Joint Commissioner of Police (Crime) and Principal Secretary (Home) on the basis of which interceptions were alleged by the petitioner were forged documents.

10. Consequent on the same report, an FIR No.152/2005. had been lodged under Sections 419, 420 468, 471 and 120B of I.P.C., read with Sections 20, 21 and 26 of the Indian Telegraph Act, on 30th December, 2005. In the said investigation the statement of the petitioner was also recorded under Section 161 of the Cr.P.C. In a subsequent affidavit filed by Mangesh Kashyap, Deputy Commissioner of Police, Headquarters on 8th February, 2011, it has been stated by the deponent that the Final Report in connection with the said investigation was filed before the competent Court on 15th February, 2006 and the charges were framed on 6th February, 2010. Four accused persons in the said case were charged under Section 120B read with Sections 420 and 471 of I.P.C. and Section 25 of the Indian Telegraph Act. In addition, Bhupender Singh had been charged under Section 201, I.P.C.

and Anurag Singh was charged under Section 419, I.P.C. The trial in the said case has commenced and one witness, Shri Ranjit Narain the then Joint Commissioner of Police was examined.

11. Here we may point out the casual manner in which the petitioner approached the Court. The affidavit filed by the petitioner in support of his petition, and relying on which this Court issued notice on 24th January, 2006, is not at all modelled either on order XIX Rule 3 of the Code of Civil Procedure, or Order XI of the Supreme Court Rules, 1966. The relevant portion of the petitioner's affidavit runs as under:

> "1.That I am the Petitioner in the above Writ Petition and am conversant with the facts and circumstances of the case. As such, I am competent to swear this affidavit.
> 2.That I have read the contents of paras 1 to 9 on pages 1 to 24 of the accompanying Writ Petition and have understood the same. I state that what is stated therein is true to my knowledge and belief.
>
> 3.That I have read the accompanying List of Dates and Events from pages B to D and have understood the same. I state that what is stated therein, is true to my knowledge and belief."

12. The provision of Order XIX of Code of Civil Procedure, deals with affidavit. Rule 3 (1) of Order XIX which deals with matters to which the affidavit shall be confined provides as follows:

> "Matters to which affidavits shall be confined. - (1) affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted; provided that the grounds thereof are stated."

13. Order XI of the Supreme Court Rules 1966 deals with affidavits. Rule 5 of Order XI is a virtual replica of Order XIX Rule 3 (1). Order XI Rule 5 of the Supreme Court Rules is therefore set out:

> "Affidavits shall be confined to such facts as the deponent is able of his own knowledge to prove, except on interlocutory applications, on which statements of his belief may be admitted, provided that the grounds thereof are stated."

14. In this connection Rule 13 of Order XI of the aforesaid Rules are also relevant and is set out below:

> "13. In this Order, `affidavit' includes a petition or other document required to be sworn or verified; and `sworn' includes affirmed. In the verification of petitions, pleadings or other proceedings, statements based on personal knowledge shall be distinguished from statements based on information and belief. In the case of

statements based on information, the deponent shall disclose the source of this information."

15. The importance of affidavits strictly conforming to the requirements of Order XIX Rule 3 of the Code has been laid down by the Calcutta High Court as early as in 1910 in the case of Padmabati Dasi v. Rasik Lal Dhar [(1910) Indian Law Reporter 37 Calcutta 259]. An erudite Bench, comprising Chief Justice Lawrence H. Jenkins and Woodroffe, J. laid down:

> "We desire to impress on those who propose to rely on affidavits that, in future, the provisions of Order XIX, Rule 3, must be strictly observed, and every affidavit should clearly express how much is a statement of the deponent's knowledge and how much is a statement of his belief, and the grounds of belief must be stated with sufficient particularity to enable the Court to judge whether it would be sage to act on the deponent's belief."

16. This position was subsequently affirmed by Constitution Bench of this Court in State of Bombay v. Purushottam Jog Naik, AIR 1952 SC 317. Vivian Bose, J. speaking for the Court, held:

> "We wish, however, to observe that the verification of the affidavits produced here is defective. The body of the affidavit discloses that certain matters were known to the Secretary who made the affidavit personally. The verification however states that everything was true to the best of his information and belief. We point this out as slipshod verifications of this type might well in a given case lead to a rejection of the affidavit. Verification should invariably be modelled on the lines of Order 19, Rule 3, of the Civil Procedure Code, whether the Code applies in terms or not. And when the matter deposed to is not based on personal knowledge the sources of information should be clearly disclosed. We draw attention to the remarks of Jenkins, C. J. and Woodroffe, J. in Padmabati Dasi vs. Rasik Lal Dhar 37 Cal 259 and endorse the learned Judges' observations."

17. In Barium Chemicals Limited and another v. Company Law Board and others, AIR 1967 SC 295, another Constitution Bench of this Court upheld the same principle:

> "The question then is: What were the materials placed by the appellants in support of this case which the respondents had to answer? According to Paragraph 27 of the petition, the proximate cause for the issuance of the order was the discussion that the two friends of the 2nd respondent had with him, the petition which they filed at his instance and the direction which the 2nd respondent gave to respondent No. 7. But these allegations are not grounded on any knowledge but only on reasons to believe. Even for their reasons to believe, the appellants do not disclose any information on which they were founded. No particulars as to the alleged discussion with the 2nd respondent, or of the petition which the said two friends were said to have made, such as its contents, its time or to which authority it was made are forthcoming. It is true that in a case of this kind it would be difficult for a petitioner to have personal

knowledge in regard to an averment of mala fides, but then were such knowledge is wanting he has to disclose his source of information so that the other side gets a fair chance to verify it and make an effective answer. In such a situation, this Court had to observe in 1952 SCR 674: AIR 1952 SC 317, that as slipshod verifications of affidavits might lead to their rejection, they should be modelled on the lines of O. XIX, R. 3 of the Civil Procedure Code and that where an averment is not based on personal knowledge, the source of information should be clearly deposed. In making these observations this Court endorse the remarks as regards verification made in the Calcutta decision in Padmabati Dasi v. Rasik Lal Dhar, (1910) ILR 37 Cal 259."

18. Another Constitution Bench of this Court in A. K. K. Nambiar v. Union of India and another, AIR 1970 SC 652, held as follows:

> "The appellant filed an affidavit in support of the petition. Neither the petition nor the affidavit was verified. The affidavits which were filed in answer to the appellant's petition were also not verified. The reasons for verification of affidavits are to enable the Court to find out which facts can be said to be proved on the affidavit evidence of rival parties. Allegations may be true to knowledge or allegations may be true to information received from persons or allegations may be based on records. The importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the Court to find out as to whether it will be safe to act on such affidavit evidence. In the present case, the affidavits of all the parties suffer from the mischief of lack of proper verification with the result that the affidavits should not be admissible in evidence."

19. In the case of Virendra Kumar Saklecha v. Jagjiwan and others, [(1972) 1 SCC 826], this Court while dealing with an election petition dealt with the importance of disclosure of source of information in an affidavit. This Court held that non-disclosure will indicate that the election petitioner did not come forward with the source of information at the first opportunity. The importance of disclosing such source is to give the other side notice of the same and also to give an opportunity to the other side to test the veracity and genuineness of the source of information. The same principle also applies to the petitioner in this petition under Article 32 which is based on allegations of political motivation against some political parties in causing alleged interception of his telephone. The absence of such disclosure in the affidavit, which was filed along with the petition, raises a prima facie impression that the writ petition was based on unreliable facts.

20. In case of M/s Sukhwinder Pal Bipan Kumar and others v. State of Punjab and others, [(1982) 1 SCC 31], a three Judge Bench of this Court in dealing with petitions under Article 32 of the Constitution held that under Order XIX Rule 3 of the Code it was incumbent upon the deponent to disclose the nature and source of his knowledge with sufficient particulars. In a case where allegations in the petition are not affirmed, as aforesaid, it cannot be treated as supported by an affidavit as required by law. (See para 12 page 38)

21. The purpose of Rules 5 and 13 of the Supreme Court Rules, set out above, has been explained by this Court in the case of Smt. Savitramma v. Cicil Naronha and another, AIR 1988 SCC 1987. This Court held, in para 2 at page 1988, as follows:

> "...In the case of statements based on information the deponent shall disclose the source of his information. Similar provisions are contained in Order 19, Rule 3 of the Code of Civil Procedure. Affidavit is a mode of placing evidence before the Court. A party may prove a fact or facts by means of affidavit before this Court but such affidavit should be in accordance with Order XI, Rules 5 and 13 of the Supreme Court Rules. The purpose underlying Rules 5 and 13 of Order XI of the Supreme Court Rules is to enable the Court to find out as to whether it would be safe to act on such evidence and to enable the court to know as to what facts are based in the affidavit on the basis of personal knowledge, information and belief as this is relevant for the purpose of appreciating the evidence placed before the Court, in the form of affidavit...."

22. In the same paragraph it has also been stated as follows:

> "...If the statement of facts is based on information the source of information must be disclosed in the affidavit. An affidavit which does not comply with the provisions of Order XI of the Supreme Court Rules, has no probative value and it is liable to be rejected..."

23. In laying down the aforesaid principles, this Court in Smt. Savitramma (supra) relied on a full Bench judgment in Purushottam Jog Naik (supra).

24. In the instant case, the petitioner invoked the extraordinary writ jurisdiction of this Court under Article 32, without filing a proper affidavit as required in terms of Order XIX Rule 3 of the Code. Apart from the fact that the petitioner invoked Article 32, the nature of the challenge in his petition is very serious in the sense that he is alleging an attempt by the government of intercepting his phone and he is further alleging that in making this attempt the government is acting on extraneous considerations, and is virtually acting in furtherance of the design of the ruling party. It is, therefore, imperative that before making such an allegation the petitioner should be careful, circumspect and file a proper affidavit in support of his averment in the petition.

25. In our judgment, this is the primary duty of a petitioner who invokes the extraordinary jurisdiction of this Court under Article 32.

26. It is very disturbing to find that on the basis of such improper and slipshod affidavit, notice was issued on the petition, as stated above, and subsequently a detailed interim order was passed on 27th February, 2006 to the following effect:

> "Mr. Mukul Rohtagi, learned senior counsel, on behalf of the petitioner submits that till this Court decides the guidelines in respect of tapping of telephones, a general order of restraint may be passed restraining publication by either electronic or print media of unauthorised tape record versions, We have asked the view points and assistance of Mr. Goolam E. Vahanavati, learned Solicitor General and Mr. Gopal Subramaniam, learned Additional Solicitor General. Both learned counsel submit that they see no prejudice for the order of restrain as sought for by Mr. Rohtagi being made."

Having regard to the facts and circumstances, we direct that electronic and print media would not publish/display the unauthorisedly and illegally recorded telephone tapped versions of any person till the matter is further heard and guidelines issued by this Court.

27. That interim order continued for about four years and is continuing till now.

28. Then when in the course of hearing of this case, it was pointed out by this Court on 2nd February, 2011 that the affidavit filed by the petitioner is perfunctory, defective and not in accordance with the mandate of law, a prayer was made by the learned Senior Counsel of the petitioner to file a proper affidavit as required under the law. Similar prayer was made by the learned Solicitor General for the official respondents, and the case was adjourned. Thereupon a detailed affidavit has been filed by the petitioner.

29. It appears from the detailed affidavit filed by the petitioner, pursuant to the order of this Court dated 2nd February, 2011, that the main documents on which the writ petition is based, namely Annexures A and B, the orders dated 22nd October, and 9th November, 2005 were obtained by him from Mr. Anurag Singh, who is one of the accused and was arrested in the aforesaid criminal case. It also appears that petitioner's averments in paragraphs 2(v), 2(vii), 2(viii) and 2(ix) are based on information derived from the same Anurag Singh and that part of the information relating to the averments in para 5 of the writ petition was also obtained from the same Mr. Anurag Singh. The petitioner, therefore, largely relied on information received from an accused in a criminal case while he filed his petition under Article 32.

30. The affidavit filed by Mr. R. Chopra on behalf of the Government of National Capital Territory, New Delhi is of some relevance in connection with the part played by respondent No.8.

31. In paragraph I, sub paragraph (IV), while giving para wise reply to the writ petition, it has been reiterated that in the order dated 9th November, 2005 (Annexure `B' to the writ petition) there are glaring discrepancies. Those discrepancies which have been noted are as follows:

> "...(iv) It is vehemently denied that the interception order dated 9th November,2005 was issued by the Principal Secretary(Home) or any other officer of the Home Department of Government of NCT of Delhi in respect of phone No. 011- 39565414 belonging to the petitioner, at any time. The order dated 9th November 2005 is forged

and fabricated. That prima facie on close scrutiny of the purported order No. F.5/1462/2004-HG dated 9.11.2005 issued by the Principal Secretary(Home), Govt. of NCT of Delhi and endorsement No. F.5/1462/2004-HG/7162 of the same date purportedly issued by the Deputy Secretary(Home) which has been annexed as Annexure B to the writ petition following discrepancies can be noted and they are as follows:-

(a) The number of file i.e. No. F.5/1462/2004-HG cited on the left hand top of the order, is on the fact of it, erroneous, as a letter mentioning the year 2004 cannot be issued in the year 2005, as the forged/fabricated order of 9/11/2005 purports to do.

(b) It is further submitted that the interception file No. F.5/1462/2004-HG in Home Department pertains to interception of some other telephone number, which do not mention the petitioner's number.

It is pertinent to mention that the interception order in the above file was issued on 22.12.2004 i.e. nine months earlier than the purported interception with the petitioner's telephone number.

(c) This shows that the aforementioned file number was simply written on the fabricated or forged order of 9th November 2005 referred to above, which has been cited by the petitioner in his writ petition.

(d) It is respectfully submitted that signatures of the then Principal Secretary (Home) and those of then Deputy Secretary(Home) have been forged and fabricated.

(e) It is respectfully submitted that the file endorsement number in the purported interception order dated 9th November, 2005 there is mention of No. F.5/1462/2004-HG/7162. This dispatch number 7162 is itself wrong and fake as the dispatch number 7162 was given to a communication issued on 10th November 2005 and this concerned the forwarding of a dismissal order against a Deputy Superintendent of the Central Jail Tihar."

32. Apart from the various discrepancies, the deponent also pointed out in sub paragraph (f) of para I (IV) the following gross spelling mistakes in the purported order dated 9.11.2005:

"(i) On the first line the words "satisfied" and "interest" have been mis-spelt as "setisfied" and "intrest"

(ii) On the second line the word "interest" has been mis-spelt as "intrest"

(iii)On the fifth line the word "disclosure" has been mis-spelt as "dicloser".

(iv)On the eighth line the word "the" has been mis-spelt as "te". The word Rules" has been mis-spelt as "Ruls" and word "exercise" has been mis-spelt as "exercies".

(v)In the eleventh line the word "message" has been mis-spelt as "massage", while on the 12th line the word "messages" has been mis-spelt as "massage"

(vi)In the endorsement forwarding the copies the purported order of 9th November, 2005 the word "Additional Commissioner" has been mis-spelt as "Addi

commissioner" and on the following line words "Chairman" and "Committee" have been mis-spelt as "Cairman" and "Committe" respectively."

33. In view of such disclosures in the affidavit of the Police authorities as also in the affidavit filed by Mr. Chopra on behalf of Delhi Administration, it appeared strange to this court how the service provider, respondent no. 8 could act on the basis of communications dated 22.10.2005 and 9.11.2005. To this Court, it appeared that any reasonable person or a reasonable body of persons or an institution which is discharging public duty as a service provider, before acting on an order like the one dated 9.11.2005, would at least carefully read its contents. Even from a casual reading of the purported communication dated 9.11.2005, containing so many gross mistakes, one would reasonably be suspicious of the authenticity of its text.

34. A query in this respect, made by the Court, was answered in a subsequent affidavit, filed on behalf of the respondent No.8, by one Col. A.K. Sachdeva, working as its Nodal Officer.

35. In the said affidavit it has been stated that similar orders containing comparable mistakes were issued by respondent No.4 and that it was impossible for the service provider to devise a practice on the basis of which the service provider could postpone interception on the ground of gross mistakes instead of taking an immediate action which is required for the safety of general public and in public interest.

36. It is further stated that when a request is made to the service provider, it is duty bound to comply with the same and there is no provision in the rule under which the service provider could send back the written request pointing out the mistakes contained therein.

37. Reference has also been made to License Condition No. 42 which provides that service provider is to give assistance, as per request, to the Law Enforcement Agencies and any violation of the said condition may lead to imposition of a heavy penalty on the service provider.

38. Considering the materials on record, this Court is of the opinion that it is no doubt true that the service provider has to act on an urgent basis and has to act in public interest. But in a given case, like the present one, where the impugned communication dated 9.11.2005 is full of gross mistakes, the service provider while immediately acting upon the same, should simultaneously verify the authenticity of the same from the author of the document. This Court is of the opinion that the service provider has to act as a responsible agency and cannot act on any communication. Sanctity and regularity in official communication in such matters must be maintained especially when the service provider is taking the serious step of intercepting the telephone conversation of a person and by doing so is invading the privacy right of the person concerned and which is a fundamental right protected under the Constitution, as has been held by this Court.

39. Therefore, while there is urgent necessity on the part of the service provider to act on a communication, at the same time, the respondent No.8 is equally duty bound to immediately verify the authenticity of such communication if on a reasonable reading of the same, it appears to any person, acting bona fide, that such communication, with innumerable mistakes, falls clearly short of the tenor of a genuine official communication. Therefore, the explanation of the service provider is not acceptable to this Court. If the service provider could have shown, which it has not done in the present case, that it had tried to ascertain from the author of the communication, its genuineness, but had not received any response or that the authority had accepted the communication as genuine, the service provider's duty would have been over. But the mere stand that there is no provision under the rule to do so is a lame excuse, especially having regard to the public element involved in the working of the service provider and the consequential effect it has on the fundamental right of the person concerned.

40. In view of the public nature of the function of a service provider, it is inherent in its duty to act carefully and with a sense of responsibility. This Court is thus constrained to observe that in discharging the said duty, respondent No. 8, the service provider has failed.

41. Of course, this Court is not suggesting that in the name of verifying the authenticity of any written request for interception, the service provider will sit upon it. The service provider must immediately act upon such written request but when the communication bristles with gross mistakes, as in the present case, it is the duty of the service provider to simultaneously verify its authenticity while at the same time also act upon it. The Central Government must, therefore, frame certain statutory guidelines in this regard to prevent interception of telephone conversation on unauthorised communication, as has been done in this case.

42. In this case very strange things have happened. At the time of filing the writ petition, the petitioner impleaded the Indian National Congress as respondent No.7 and also made direct allegations against it in paras 2(1), 2(10), 2(11) and 2(12). In para 2(12) and in para 5 of the writ petition, there are indirect references to the said respondent. In various grounds taken in support of the petition, allegations have been specifically made against the 7th respondent.

43. Even though in the order of this Court dated 27th February, 2006, there is an observation that respondent No. 7 has been impleaded unnecessarily, the said respondent has not been deleted and in the amended cause title also, respondent No. 7 remains impleaded. The averments against the said respondent were not withdrawn by the petitioner.

44. In the month of February of 2011, towards the closing of the hearing, an additional affidavit, which makes very interesting reading, was filed by the petitioner. All the three paragraphs of that affidavit are set out:

> "I, Amar Singh, son of late Shri H. G. Singh, aged 54 years residing at 27, Lodhi Estate New Delhi, do hereby solemnly swear on oath as under: -

> 1. That I am the petitioner in the above matter and am conversant with the facts and circumstances of the case and as such competent to swear this affidavit. The Petitioner craves leave of this Hon'ble Court to place the following additional facts on record before this Hon'ble Court which has a bearing on the matter.
>
> 2. That the Petitioner was informed by one Mr. Anurag Singh, alias Rahul, who is one of the accused in the FIR No. 152/2005, registered in Delhi that his phone was being tapped at the behest of political opponents. However, later the Delhi Police investigated the mater and the said Anurag Singh alias Rahul, was arrested by the Delhi Police for forging and fabricating the orders on the basis of which the phone line of the petitioner was tapped. Further, the Anurag Singh, alias, Rahul, edited and tampered certain conversations of the Petitioner.
>
> 3. It is stated that the Petitioner was the complainant in the instant case. It is stated that the Petitioner is satisfied with the investigation of Delhi Police, and therefore withdraws all averments, contentions and allegations made against Respondent no. 7."

45. All the aforesaid paragraphs were verified by the petitioner as true to his knowledge.

46. The said affidavit of the petitioner filed in February, 2011, completely knocks the bottom out of the petitioner's case, inasmuch as by the said affidavit the petitioner seeks to withdraw all averments, allegations and contentions against the respondent no. 7. The main case of the petitioner is based on his allegations against respondent no.7. The burden of the song in the writ petition is that the respondent no. 7, acting out of a political vendetta and exercising its influence on Delhi Police administration caused interception of the telephone lines of various political leaders of the opposition including that of the petitioner. The subsequent affidavit also acknowledges that the petitioner is satisfied with the investigation by the Delhi Police in connection with the forgery alleged to have been committed, namely the fabrication of orders on the basis of which the phone lines of the petitioner were tapped. Petitioner also makes a statement that the said Anurag Singh edited and tampered some of the conversations of the petitioner. It is very interesting to note that when the petitioner filed a detailed affidavit in support of his writ petition, pursuant to the order of this Court, the petitioner admitted that he relied on the information from the same Anurag Singh, and the main annexures to the petition, namely A and B were received by him from the same Anurag Singh. Paragraphs 2 (2), 2 (3), 2 (4) and 2 (6) are based on the information received from Mr. Anurag Singh. But he did not say all these in his affidavit when he filed the writ petition on 21st January 2006.

47. It may be noted that when the writ petitioner filed the petition on 21st January, 2006, he was aware of an investigation that was going on by the Delhi Police in connection of the forgery of annexures A and B. Even then he filed the petition with those annexures and without a proper affidavit.

48. It therefore appears that the petitioner has been shifting his stand to suit his convenience. In 2006, the gravamen of the petitioner's grievances was against the respondent no. 7, and the basis of his petition was the information that he derived from the said Anurag Singh. On the

basis of such a petition, he invoked the jurisdiction of this Court and an interim order was issued in his favour, which is still continuing.

49. Now when the matter has come up for contested hearing, he suddenly withdraws his allegations against the respondent no. 7 and feels satisfied with the investigation of the Police in connection with the aforesaid case of forgery and also states that the same Anurag Singh "edited and tampered certain conversations of the petitioner".

50. This Court wants to make it clear that an action at law is not a game of chess. A litigant who comes to Court and invokes its writ jurisdiction must come with clean hands. He cannot prevaricate and take inconsistent positions.

51. Apart from the aforesaid, in the writ petition which was filed on 21st January, 2006, there is no mention of the fact that the petitioner gave a statement under section 161, Code of Criminal Procedure in connection with the investigation arising out of FIR lodged on 30th December, 2005. From the records of the case it appears the petitioner gave 161 statement on 13th January, 2006. In the writ petition there is a complete suppression of the aforesaid fact. A statement under Section 161 is certainly a material fact in a police investigation in connection with an FIR. The investigation is to find out the genuineness of those very documents on the basis of which the writ petition was moved. In that factual context, total suppression in the writ petition of the fact that the petitioner gave a 161 statement in that investigation is, in our judgment, suppression of a very material fact.

52. It is, therefore, clear that writ petition is frivolous and is speculative in character. This Court is of the opinion that the so called legal questions on tapping of telephone cannot be gone into on the basis of a petition which is so weak in its foundation.

53. Courts have, over the centuries, frowned upon litigants who, with intent to deceive and mislead the courts, initiated proceedings without full disclosure of facts. Courts held that such litigants have come with "unclean hands" and are not entitled to be heard on the merits of their case.

54. In Dalglish v. Jarvie {2 Mac. & G. 231,238}, the Court, speaking through Lord Langdale and Rolfe B., laid down:

> "It is the duty of a party asking for an injunction to bring under the notice of the Court all facts material to the determination of his right to that injunction; and it is no excuse for him to say that he was not aware of the importance of any fact which he has omitted to bring forward."

55. In Castelli v. Cook {1849 (7) Hare, 89,94}, Vice Chancellor Wigram, formulated the same principles as follows:

> "A plaintiff applying ex parte comes under a contract with the Court that he will state the whole case fully and fairly to the Court. If he fails to do that, and the Court finds,

> when the other party applies to dissolve the injunction, that any material fact has been suppressed or not property brought forward, the plaintiff is told that the Court will not decide on the merits, and that, as has broken faith with the Court, the injunction must go."

56. In the case of Republic of Peru v. Dreyfus Brothers & Company {55 L.T. 802,803}, Justice Kay reminded us of the same position by holding:

> "...If there is an important misstatement, speaking for myself, I have never hesitated, and never shall hesitate until the rule is altered, to discharge the order at once, so as to impress upon all persons who are suitors in this Court the importance of dealing in good faith with the Court when ex parte applications are made."

57. In one of the most celebrated cases upholding this principle, in the Court of Appeal in R. v. Kensington Income Tax Commissioner {1917 (1) K.B. 486} Lord Justice Scrutton formulated as under:

> "and it has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts- facts, now law. He must not misstate the law if he can help it - the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the Court enforces that obligation is that if it finds out that the facts have been fully and fairly stated to it, the Court will set aside any action which it has taken on the faith of the imperfect statement."

58. It is one of the fundamental principles of jurisprudence that litigants must observe total clarity and candour in their pleadings and especially when it contains a prayer for injunction. A prayer for injunction, which is an equitable remedy, must be governed by principles of `uberrima fide'.

59. The aforesaid requirement of coming to Court with clean hands has been repeatedly reiterated by this Court in a large number of cases. Some of which may be noted, they are: Hari Narain v. Badri Das - AIR 1963 SC 1558, Welcome Hotel and others v. State of A.P. and others - (1983) 4 SCC 575, G. Narayanaswamy Reddy (Dead) by LRs. and another v. Government of Karnatka and another - JT 1991(3) SC 12: (1991) 3 SCC 261, S.P. Chengalvaraya Naidu (Dead) by LRs. v. Jagannath (Dead) by LRs. and others - JT 1993 (6) SC 331: (1994) 1 SCC 1, A.V. Papayya Sastry and others v. Government of A.P. and others - JT 2007 (4) SC 186: (2007) 4 SCC 221, Prestige Lights Limited v. SBI - JT 2007(10) SC 218: (2007) 8 SCC 449, Sunil Poddar and others v. Union Bank of India - JT 2008(1) SC 308: (2008) 2 SCC 326, K.D.Sharma v. SAIL and others - JT 2008 (8) SC 57: (2008) 12 SCC 481, G. Jayashree and others v. Bhagwandas S. Patel and others - JT 2009(2) SC 71 : (2009) 3 SCC 141, Dalip Singh v. State of U.P. and others - JT 2009 (15) SC 201: (2010) 2 SCC 114.

60. In the last noted case of Dalip Singh (supra), this Court has given this concept a new dimension which has a far reaching effect. We, therefore, repeat those principles here again:

> "For many centuries Indian society cherished two basic values of life i.e. "satya"(truth) and "ahimsa (non-violence), Mahavir, Gautam Budha 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. 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."

61. However, this Court is constrained to observe that those principles are honoured more in breach than in their observance.

62. Following these principles, this Court has no hesitation in holding that the instant writ petition is an attempt by the petitioner to mislead the Court on the basis of frivolous allegations and by suppression of material facts as pointed out and discussed above.

63. In view of such incorrect presentation of facts, this court had issued notice and also subsequently passed the injunction order which is still continuing.

64. This Court, therefore, dismisses the writ petition and vacates the interim order and is not called upon to decide the merits, if any, of the petitioner's case. No case of tapping of telephone has been made out against the statutory authorities in view of the criminal case which is going on and especially in view of the petitioner's stand that he is satisfied with the investigation in that case. The petitioner has withdrawn its case against the respondent No.7. In that view of the matter this Court makes it clear that the petitioner, if so advised, may proceed against the service provider, respondent No.8, before the appropriate forum, in accordance with law. This Court, however, makes it clear that it does not make any observation on the merits of the case in the event the petitioner initiates any proceeding against respondent No.8.

65. This court wants to make one thing clear i.e. perfunctory and slipshod affidavits which are not consistent either with Order XIX Rule 3 of the CPC or with Order XI Rules 5 and 13 of the Supreme Court Rules should not be entertained by this Court.

66. In fact three Constitution Bench judgments of this Court in Purushottam Jog Naik (supra), Barium Chemicals Ltd. (supra) and A.K.K. Nambiar (supra) and in several other judgments pointed out the importance of filing affidavits following the discipline of the provision in the Code and the said rules.

67. These rules, reiterated by this Court time and again, are aimed at protecting the Court against frivolous litigation must not be diluted or ignored. However, in practice they are frequently flouted by the litigants and often ignored by the Registry of this Court. The instant petition is an illustration of the same. If the rules for affirming affidavit according to Supreme Court were followed, it would have been difficult for the petitioner to file this petition and so much of judicial time would have been saved. This case is not isolated instance. There are innumerable cases which have been filed with affidavits affirmed in a slipshod manner.

68. This Court, therefore, directs that the Registry must henceforth strictly scrutinize all the affidavits, all petitions and applications and will reject or note as defective all those which are not consistent with the mandate of Order XIX Rule 3 of the CPC and Order XI Rules 5 and 13 of the Supreme Court Rules.

69. The writ petition is, therefore, dismissed subject to the aforesaid liberty. All interim orders are vacated.

70. Parties are left to bear their own costs.

[1]*(1997) 1 SCC 0301*