
(2002) 09 AHC CK 0218
In the Allahabad High Court
Case No : C.M.W.P. No. 43987 of 1997

Aloo Phal Subzi Arhati Association and Another	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 13-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964 — Section 7(2)

Citation : (2002) 5 AWC 3837

Hon'ble Judges : R.P. Misra, J;G.P. Mathur, J

Bench : Division Bench

Advocate : Arun Kumar, for the Appellant; B.D. Mandhyan and S.C., for the Respondent

Final Decision : Dismissed

Judgement

1. Three prayers have been made in this petition. The first prayer is for quashing the Notification No. 2787/12-5-600 (419)/81 dated 15.11.1997 u/s 7(2) (b) of Krishi Utpadan Mandi Adhiniyam (hereinafter referred to as the Act), by which earlier notification dated 9.3.1981 was amended and "fruits" and "vegetables" were added as items Nos. 42 to 84. The second prayer is that a writ of mandamus be issued restraining the Respondents in causing interference or obstruction by restricting the transportation or movement of trucks and suspension or cancellation of licence or in any other manner in carrying on wholesale trade of fruits and vegetables at "O" Block, Kidwai Nagar, Kanpur by the Petitioners.

2. It is averred in para 3 of the writ petition that the Petitioner No. 1 is an association of wholesale sellers in fruits and vegetables, which has been registered under the Societies Registration Act. The members of the association are registered proprietors/partnership firms carrying on business of purchase and sale of fruits and vegetables. A list of the members of the Petitioner association is annexed as Annexure-1 to the writ petition. In para 4, it is averred

that the executive committee of the Petitioner No. 1 has resolved to file the instant writ petition challenging the impugned notification dated 15.11.1997.

3. At the time of commencement of the hearing, Sri B. D. Mandhyan learned Counsel for the Respondents has submitted that there are two writ Petitioners, namely (i) Aloo Phal Subzi Arhati Association, a society registered under the Societies Registration Act having its office at 30F, "O" Block, Subzi Mandi, Kidwai Nagar, Kanpur and (ii) Sunder Fruits Co. and court fee of Rs. 200 only has been paid and, therefore, the writ petition cannot be treated to be on behalf of all the members of the Petitioner No. 1 association and they are not entitled to any relief until they themselves join in the writ petition and pay the requisite court fee. Sri R. N. Singh, learned senior counsel appearing for the Petitioners has submitted that the Petitioner No. 1 is an association of "Aloo Phal Subzi Arhatis" which is a registered society under the Societies Registration Act and association having filed the writ petition, it will enure to the benefit of its members and they are not required to either join in the writ petition or to pay separate court fee.

4. The main question is whether in view of the facts and pleadings of the parties, any order passed in the writ petition will enure to the benefit of the members of the Petitioner No. 1, even though they have neither been impleaded by name nor they have paid any court fee.

5. Sri R. N. Singh has laid great stress on a Full Bench decision of our court in Umesh Chand Vinod Kumar and Others Vs. Krishi Utpadan Mandi Samiti and Another, and has submitted that since right to relief arises from the same act or transaction and there is a common question of law and fact, a single writ petition is maintainable and only one set of court fee would be payable. The Full Bench decision is often cited where a large number of persons join together and pay a single court fee. The ratio of Full Bench is not what has been urged by the learned Counsel for the Petitioners.

6. In all five questions of law, were referred for consideration by the Full Bench . The question Nos. 1 and 2 were as follows:

(1) Whether an association of persons, registered or unregistered can maintain a petition under Article 226 of the Constitution for the enforcement of the rights of its members as distinguished from the enforcement of its own rights?

(2) Whether a single writ petition under Article 226 of the Constitution is maintainable on behalf of more than one Petitioners, not connected with each other as partners or those who have no other legally subsisting jural relationship, where the questions of law and fact involved in the petition, are common?

The answers to these questions were given in paras 20 to 23 of the reports which is being reproduced below:

20. To summarise, the position appears to be that an association of persons, registered or unregistered, can file a petition under Article 226 for enforcement of the rights of its members as distinguished from the enforcement of its own

rights:

(1) In case members of such an association are themselves unable to approach the Court by reason of poverty, disability or socially or economically disadvantaged position "little Indians".

(2) In case of a public injury leading to public interest litigation provided the association has some concern deeper than that of a way-farer or a busybody, i.e., it has a special interest in the subject matter.

(3) Where the rules or regulations of the association specifically authorise it to take legal proceedings on behalf of its members, so that any order passed by the Court in such proceedings will be binding on the members.

21. In other cases, an association whether registered or unregistered cannot maintain a petition under Article 226 for the enforcement or protection of the rights of its members, as distinguished from the enforcement of its own rights.

22. This is our answer to question No. 1. Question No. 2: Whether a single writ petition under Article 226 of the Constitution is maintainable on behalf of more than one Petitioner not connected with each other as partners or those who have no other legal subsisting jural relationship where the questions of law and facts involved in the petitions are common?

23. It will be seen that this question raises the issue of maintainability on ground of joinder or misjoinder of Petitioners. Question No. 1, on the other hand, raised the point about locus standi or standing. The concept of locus standi is different and distinct from the question of joinder of parties. The former relates to the right of a person to approach the Court ; the latter to join with others in approaching the Court. One may not be confused with the other. The most important thing to be noticed is that the question No. 1 relating to maintainability of a petition by an association of persons (registered or unregistered) for the enforcement of rights of its members as distinguished from its own right was with regard to the locus standi of the association and not with regard to joinder of parties. The question No. 1 was answered only with regard to locus standi of the association to maintain writ petition. It has no bearing on the question of payment of court fee.

(Emphasis supplied)

7. The averments made in the paras 3 and 4 of the writ petition show that the members of Petitioner No. 1 association are registered proprietors/partnership firms carrying on business of purchase and sale of fruits and vegetables. They are challenging a notification issued by the State Government and further want that Respondents should not suspend or cancel their licences and should not put any obstruction or restriction in their wholesale trade of fruits and vegetables by them or in the transportation or movement of trucks to their business premises. They are businessmen carrying on business in wholesale and want a relief personally in their own favour. Obviously the case is not covered by

sub-paras (1) and (2) of Para 20 quoted above. There is absolutely no averment in the writ petition that any rules or regulations have been framed by the association. Aloo Phal Subzi Arhatis Association (Petitioner No. 1) specifically authorising it to pursue legal proceedings on behalf of its members so that any order passed by the Court in such proceedings will be binding on them. There is not even a whisper to the effect in the writ petition. Annexure-1 to the writ petition gives a long list of 224 registered proprietOrships/partner-ship firms. Annexure-2 is an extract of the resolution passed in a meeting of Petitioner No. 1 held at its office wherein Sri Amarjeet Singh was authorised to take all legal proceedings regarding shifting of the Subzi Mandi, Kidwai Nagar. This resolution (even if it is accepted to be correct and genuine) does not say that any order passed by the Court on the proceedings instituted by the Association will be binding on all its members. In fact, such a resolution would not amount to "Rules or Regulations of the Association" so as to satisfy the requirement of sub-para (3) of para 20 quoted above. Thus, the instant writ petition filed by Aloo Phal Subzi Arhatis Association cannot enure to the benefit of its alleged members nor its members can take any advantage of any order passed in the writ petition.

8. We may now examine the question of joining together of several persons in a single writ petition and payment of court fee by them. Prior to Umesh Chand v. Krishi Utpadan Mandi Samiti(supra), a Full Bench in Mall Singh v. Smt. L. K. Khaitan 1968 ALJ 210, had held that the joinder of more than one person under Article 226 can be permitted only where right to relief arises from the same act or transaction and there is a common question of law or fact or where though the right of claim does not arise from the same act or transaction, the Petitioners are jointly interested in cause or causes of action. While answering the question No. 2, the Full Bench in Umesh Chand (supra) virtually reiterated the view taken in Mall Singh (supra). This will be clear from para 34 of the reports which reads as under:

34. Our answer to the second question is that a single writ petition under Article 226 of the Constitution by more than one Petitioner, not connected with each other as partners or any other legally subsisting jural relationship, is maintainable where the right to relief arises from the same act or transaction and there is a common question of law or fact or where though the right of claim does not arise from the same act or transaction, the Petitioners are jointly interested in the cause or causes of action.

9. A similar question regarding payment of court fee was considered by the Apex Court in Mota Singh and Others Vs. State of Haryana and Others, , where a number of truck owners challenged imposition of road tax and it was held as under:

... We are prima facie satisfied that the Petitioners have not paid court fees legally payable and that the Petitioners have so modelled the title clause of the petitions as may indicate that the payment of the legally payable court fee could be evaded. Having regard to the nature of these cases where every owner of a

truck plying his truck for transport of goods has a liability to pay tax impugned in the petition, each one has his own independent cause of action. A firm, as understood under the Partnership Act or a Company, as understood under the Indian Companies Act, if it is entitled in law to commence action either in the firm's name or in the Company's name, can do so by filing a petition for the benefit of the company or the partnership and in such a case, court fee would be payable depending upon the legal status of the Petitioner. But it is too much to expect that different truck owners having no relation with each other either as partners or any other legally subsisting jural relationship of association of persons would be liable to pay only one set of court fee simply because they have joined as Petitioners in one petition. Each one has his own cause of action arising out of the liability to pay tax individually and the petition of each one would be a separate and independent petition and each such person would be liable to pay legally payable court fee on his petition. It would be a travesty of law if one were to hold that as each one uses high way, he has common cause of action with the rest of truck pliers.

10. Each one of the persons who claims to be a member of the Petitioner No. 1 association has his own cause of action as he has been granted separate licence by the Mandi Samiti and is carrying on business separately and in separate business premises. Therefore, the petition on behalf of each one of them, in law, has to be treated as a separate and independent petition and each such person or firm is liable to pay separate court fee.

11. The third and fourth questions referred to the Full Bench and their answers are given in paras 35, 36 and 37 of the reports and they are being reproduced below:

35. The third and fourth questions are:

(3) In case the answer to question No. 1 is in the affirmative, whether only one set of court fees would be payable on such petition or each such individual Petitioner has to pay court fees separately?

(4) In case answer to question No. 1 is in the negative, whether the defect of misjoinder of several Petitioners in the writ petition can be cured by requiring each such Petitioner to pay separate court fees?

36. Where a single writ petition by an association or by more than one person is maintainable as mentioned above, only one set of court fees would be payable. The levy of court fee will not depend on the number of persons who have joined in the writ petition. But, where a single writ petition is not validly maintainable, but nonetheless several persons join in it, then the principle laid down in *Mota Singh and Others Vs. State of Haryana and Others*, will apply ; namely each Petitioner will have to pay court fee separately as if he had filed a separate writ petition. In such cases, the writ petition may not, in the discretion of the Court, be dismissed outright. The defect of mis-joinder of Petitioners can be cured by requiring each Petitioner to pay separate court fees.

37. Our answer to the third question is that where a single writ petition by an association or by more than one person is maintainable, then a single set of court fees would be payable. Else, each Petitioner is liable to pay separate court fees.

12. The observation "where a single writ petition by an association or by more than one person is maintainable as mentioned above, only one set of court fee would be payable" has to be read in the light of the answer given to the question Nos. 1, 2 and 3 which have been extracted above (Paras 20, 34 and 37 of the reports). Therefore, to determine whether only one set of court fee would be payable, the principles laid down in above quoted paras have to be examined. As already held, the case in hand does not satisfy the requirement of any one of the sub-paras 1 to 3 of para 20 and para 34 and, therefore, the contention of the learned Counsel for the Petitioner that only one set of court fee would be payable cannot be accepted.

13. The confusion sought to be created by the Petitioners on the basis of the some observations made in the judgment of the Full Bench would be dispelled by the subsequent observations made in paras 39, 40 and 41 of the reports which are as under:

"39. In the present group of writ petitions the position is that the Petitioners are businessmen carrying on business in foodgrains etc. under licences granted to each one of them separately. They are, in effect, seeking enforcement of their individual rights. Their grievance is against the levy of market fee on each of them by the Mandi Samiti. The Mandi Samiti has issued notices to individual traders who are the Petitioners requiring them to file returns as provided in the rules and to pay market fee. They want the quashing of these notices issued to individual Petitioners. In some of the writ petitions a direction has been sought that the Mandi Samiti is not entitled to levy market fee.

40. It is true that the principal question raised in these petitions is the same, but nonetheless each Petitioner has an independent cause of action because each Petitioner has been made liable to pay market fee. The cause of action is not joint. Under these circumstances, the Petitioners cannot validly maintain a joint writ petition.

41. The petitions may not, however, be dismissed on this ground provided the Petitioners pay separate court fee for each one of them.

14. The present case is exactly identical on facts with the case considered by the Full Bench, namely, Umesh Chand (supra) as there also the writ Petitioners were businessmen carrying on business of food-grains under licences granted to them by the Mandi Samiti and they were aggrieved by the levy of market fee and the notices issued to them. The members of the Petitioner No. 1 association have been granted licences by the Mandi Samiti and they are carrying on business in different business premises. They are aggrieved by the decision to shift subzi mandi. In reality, the relief sought is that they may not be required to shift their

respective business premises, (which are separate and distinct) to another place. The members of the Petitioner No. 1 association are seeking enforcement of their individual rights and each one of them has an independent cause of action. The cause of action is not joint and they cannot validly maintain and join in a single writ petition. However, a joint writ petition can be filed provided they pay separate court fees.

15. In *Re-Grain International* AIR 1981 AP 301, several traders who were all registered dealers filed a single writ petition seeking a writ to interdict the Respondents from interfering with the free movement of rice. A Division Bench held that the cause of action for each of the Petitioners is separate and distinct cause of action peculiar to himself and, therefore, even if they were allowed to join in a single writ petition, they would be liable to pay court fee as if each one of them had filed a writ petition and each one of the Petitioners would have to pay court fee of Rs. 100. In *Ramesh Pandey v. State of Karnataka* AIR 1982 Kar 343, several persons who were carrying on business of vending liquor had filed a joint petition challenging imposition of certain tax. It was held that the writ Petitioners had separate and distinct cause of action and each one of them had to pay a separate court fee of Rs. 100 as if he had presented separate writ petition.

16. Learned Counsel for the Petitioners has referred to *Sarojan and Jha v. Hari Fertilizers* 1994 FLR 1035. In this case, a single writ petition was filed by several workmen whose services had been terminated and on account of non-eviction of quarters allotted to them, complaints under the Companies Act had been filed. It was held on facts that a single court fee was payable. In this case, the decision of the Supreme Court in *Mota Singh* (supra) was not noticed. The writ Petitioners were poor workmen whose services had been terminated and they were further threatened with criminal prosecution. This case is, therefore, completely distinguishable on facts as in the present case the alleged members of the Petitioner No. 1 association are registered proprietOrships/ partner-ship firms carrying on business in whole sale for whom the court fee of Rs. 100 is just a peanut.

17. The preliminary objection raised by Sri B. D. Mandhyan learned Counsel for the Respondents is consequently upheld. It is accordingly directed that the writ petition filed by the Petitioner No. 1 association will not enure for the benefit of members of association. However, in the interest of justice, it is directed that it will be open to the members of the Petitioner No. 1 association to move an application for impleadment after paying separate court fee within two weeks.

18. List on 27.9.2002.