
(2003) 07 AHC CK 0099
In the Allahabad High Court
Case No : C.M.W.P. No. 26280 of 2003

Dr. Prabhu Nath Prasad Gupta

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 01-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 4 AWC 3010

Hon'ble Judges : D.P. Gupta, J;B.S. Chauhan, J

Bench : Division Bench

Advocate : Viqar Ahmad, for the Appellant;

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—This writ petition has been filed for quashing the order dated 28th May, 2003, by which petitioner had been asked to vacate the Government accommodation as he stood transferred to other hospital and the said accommodation was required for the person transferred in his place.

2. Facts and circumstances giving rise to this case are that petitioner had been working in a hospital and he had been granted the residential accommodation for that purpose. Petitioner stood transferred to other hospital but he did not vacate the house and meanwhile proceeded to United State of America and he has not come back. Meanwhile, the impugned order of vacating the said residential accommodation has been served upon the petitioner's mother, who had filed this writ petition on behalf of the petitioner. Without entering into the merit of the submission of the learned counsel for the petitioner issue of maintainability of the writ petition by the mother requires consideration.

3. The issue of filing a writ petition through Power of Attorney-holder or someone else is no more res-integra as it has been considered by the Hon'ble Apex Court time and again. In Charanjit Lal Chowdhary v. Union of India and Ors., AIR 1951 SC 41, the Constitution Bench of the Supreme Court held that the legal rights

that can be enforced in writ jurisdiction must ordinarily be the rights of the petitioner himself/herself, who complains of infraction of such right and approaches the Court for relief. "The right that can be enforced under Article 226 shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto, this rule may have to be relaxed or modified."

4. In *The State of Orissa Vs. Madan Gopal Rungta*, the Constitution Bench of the Supreme Court held that the language of the Article itself shows that the issue of writs or direction by the Court is founded only on its decision that a right of the aggrieved party has been infringed.

5. Again, a Constitution Bench of the Supreme Court considered this issue in *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, and held that except in a writ of habeas corpus or quo warranto, the person can approach the Court only for redressal of his personal grievances.

6. In *State of Punjab Vs. Suraj Parkash Kapur etc.*, the Constitution Bench of the Hon"ble Supreme Court observed as under :

"The existence of a right and the infringement thereof are the foundation of the exercise of the jurisdiction of the Court under Article 226 of the Constitution. The right that can be enforced under Article 226 of the Constitution shall ordinarily be the personal or individual right of the applicant."

7. In *State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo*, , the Constitution Bench of the Supreme Court held that the concluding words of Article 226 indicate that before a writ or appropriate order can be issued in favour of a party, it must be established that the party has a right and the said right is illegally invaded or threatened.

8. Thus, it becomes quite clear that a party can enforce its individual right through writ jurisdiction. While seeking issuance of writs like habeas corpus and quo warranto, there may be an exception.

9. In *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, the Hon"ble Supreme Court observed as under :

"..... that "ordinarily" the petitioner who seeks the filing of an application under Article 226 of the Constitution should be one, who has a personal or individual right in the subject matter of the petition."

10. In *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, nearly a Constitution Bench of the Supreme Court, while explaining the scope of the writ jurisdiction, emphasised that it can be resorted to only by an aggrieved person. The Court observed as under :

"Its scope and meaning depends on diverse, variable factors such as the contents and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest and

the nature and extent of the prejudice or injury suffered by him. English courts have sometime put a restriction and sometime a wide construction on the expression "aggrieved person." However, some general tests have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary locus standi or "standing" to invoke certiorari jurisdiction."

11. In *Cyril E. Fernandes Vs. Sr. Maria Lydia and Others*, the Apex Court held that a person who is "directly concerned" with the grievance can maintain the writ petition.

12. In *Municipal Council, Waraseoni and Another and Shri Krishan Lal and Others Vs. Satish Chandra Jain and Another and Nagarpalika Parishad, Waraseoni*, the Hon"ble Supreme Court held that writ is maintainable only by the aggrieved party and not by some one else and a person cannot be permitted to maintain a writ only by stealing the language of any person, who was in real sense aggrieved.

13. In the instant case, it has been submitted by learned counsel for the petitioner that writ petition has been preferred by the aggrieved party for redressal of his grievances through his mother, and therefore, the principle laid down by the Hon"ble Supreme Court in the judgments referred to above, is not applicable. The submission seems to be attractive but hollow in substance, for the reason that the law prohibits to do something indirectly which is prohibited to be done directly. It is settled proposition of law that what cannot be done "per directum is not permissible to be done per obliquum", meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect or circuitous contrivance on the principles of "quando aliquid prohibetur, prohibetur omne per quod devenitur ad illud.

14. In *Jagir Singh Vs. Ranbir Singh and Another*, , the Apex Court observed that an authority cannot be permitted to evade a law by "shift or contrivance." While deciding the said case, the Hon"ble Supreme Court placed reliance on the judgment in *Fox v. Bishop of Chester* (1824) 2 B & C 635, wherein it has been observed as under :

"To carry out effectually the object of a Statute, it must be construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined."

15. Thus, it is crystal clear that law prohibits to do something indirectly which is prohibited to be done indirectly.

16. In a case like this, it becomes immaterial whether the power of attorney-holder or someone else files a case in his name for the person aggrieved or person aggrieved files a case through the power of attorney-holder. Therefore, the petition is not maintainable.

17. Petition stands dismissed accordingly.