
(1957) 01 AP CK 0009

In the Andhra Pradesh High Court

Case No : S.R. No. 28757 of 1956

In Re: Atmakuri Gopalkrishnarao and Others

Date of Decision : 30-01-1957

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 1, Order 1 Rule 8
Constitution of India, 1950 — Article 226

Citation : (1957) 01 AP CK 0009

Hon'ble Judges : Kumarayya, J

Bench : Single Bench

Advocate : D.P. Narayanarao, for the Appellant; A. Venkataramana, Govt. Pleader., for the Respondent

Judgement

Kumarayya, J.—I am now concerned only with the question whether two or more persons can join in a single petition for a writ of mandamus to enforce their separate claims. The Petitioners before me are individual owners of ten rice mills in Krishna District. Ever since 1951, each one of these ten Petitioners has been taking out a separate licence in respect of his mill on payment of a fixed licence fee of Rs. 24/-. A sum of Rs. 200 collected by way of deposit for the due performance of the conditions of licence still continues to be a deposit for the same. But, when the Petitioners applied separately as usual for renewal of their licences for the year 1956-57, the Collector of Krishna made a demand of a further deposit of Rs. 300 from each on the ground that the mill of every Petitioner is equipped with a sheller or a sheller grinding stone.

Aggrieved by these orders, the Petitioners have come to this Court. Through this joint petition they now call in question the legality of the orders-passed on their respective petitions and request that a writ of mandamus or any order or direction in the nature of a writ be issued to the Collector, Krishna directing him to renew the licences of the Petitioners and to forbear from taking any steps for default of payment of additional deposit pending disposal of the writ petitions.

2. It must be noted here that the orders impugned are as many as ten in number and each of them affects only a particular Petitioner. There is not a single order

which gives rise to a common cause of action. All that can be said of them is that they are similar in nature and involve a point, of common interest. The point therefore for consideration is, whether the Petitioners aggrieved by similar orders can join in one action for a writ.

3. The learned Counsel for the Petitioners argues that the Petitioners have invoked civil jurisdiction of this Court for the issue of a writ, that the provisions of the CPC therefore apply and that as Order 1, Rule 1 permits such "joinder of Petitioners a common petition is tenable in law. It is correct to state that such a writ petition is a civil proceeding and the jurisdiction of this Court in this behalf is original as distinguished from the appellate or revisional jurisdiction .and it is summary in nature. Provisions of CPC are no doubt available to such proceedings but only as far as they are consistent with the. nature and scope of the proceedings and general principles guiding such writs.

I am therefore not prepared to hold that principles of Order 1, Rule 1, Code of Civil Procedure, or Order 1, Rule 8, CPC must be extended to such petitions. In Halsbury's Laws of England (Hailsham 2nd Edition, Vol. 9) in paragraph 1325 at page 783 the general principle relating to petitions for issue of writ of mandamus has been stated in the following words:

Two or more persons cannot join in a single petition for a writ of mandamus to enforce separate claims. There must be separate applications f or separate writs and this although the several applicants are successors in the office in respect of which claims arise.

This rule is warranted by the nature of the writ proceedings and is calculated to remove great inconvenience which might otherwise result in issuing several writs, orders or directions in the nature of writ on a single omnibus petition relating to rights of several persons affected by distinct or separate orders. The right of a person to apply for an appropriate writ flows from the order that affects him. A person desirous of questioning the validity or legality of such order is entitled, subject to other conditions, to apply for such writ.

It is not open to him to join in this petition other person or persons affected by similar orders, for they too have a remedy, open to them and the quashing of one order does not necessarily render the other order null and void. The case, however, may be different where a common or class injury is done by some common order or orders. Even in cases where joint application is thus permissible, the principle laid down in American Jurisprudence, " Vol. 35 Page 81, paragraph 33 is that if it is found that even one of the applicants is disentitled to relief the whole application must fail.

This only illustrates that the filing of a separate and independent petition is a rule which knows of few exceptions and the principles embodied in Order 1, Code of Civil Procedure, cannot be extended to "writ petitions, The question whether the provisions of Order 1. Code of Civil Procedure, should apply seems to have come up for consideration before some of the High Courts in India. In Inder Singh and

Another Vs. State of Rajasthan and Others, , where 23 separate applications for revision were disposed of by a common judgment by the Revenue Board a single Writ Petition against such order was held to be untenable. In *Mandir Thakar Dawrao v. State of Pepsu*. AIR 1955 P&H 159 (B), it was observed that the provisions of the CPC cannot override the general rule that there should be separate application for separate writ.

In a recent Madras case in *Devaki and Others Vs. Rajagopal Naidu*, which related to a writ petition filed by the Deputy Commercial Tax Officer, Pudukottai, Tanjore Cusba and Kumbakonam, Raja Gopala Ayyangar J. held that a single petition by the Petitioners affected by similar orders is not tenable in law and that the principle of Order 1, Rule 8, Code of Civil Procedure, cannot be extended" to such petitions. The learned Counsel has referred me to a Calcutta case *Manindra Nath Pal and Others Vs. Municipal Commissioners of Baranagore Municipality and Another*, at p. 295 wherein it was observed that it will be sufficient for the Petitioners in a writ proceeding to follow analogously the provisions of Order 1, CPC This is merely an obiter dicta as is obvious from the following observation of the learned Judge:

However this is a point upon which it is unnecessary to say more be cause it finally appears that only one Petitioner has any possible ground to put forward in this application.

Reference is also made to a Bombay case *United Motors (India) Ltd. v. State of Bombay*, ILR 55 Bom 246 at P. 254 (E) where seven Petitioners had joined in one petition for a writ under Article 226 of the Constitution but it must be noted that the claim made by the all Petitioners was the same, viz., that the Sales Tax Act is invalid and it should not be enforced against them. Chagla C, J. quoting with approval the principles laid down in *Halsbury's Laws of England*, Vol. IX p. 783, para 1325 observed:

Here there are not several claims made by several Petitioners. Even assuming that the Advocate-General was right, at the highest the joining of more than one Petitioner would be a surplusage "and that surplusage would be cured by six of the Petitioners being struck off the record. The petition could easily be maintained by one out of the seven Petitioners.

Thus the statement of law made in the English: decision in the *King v. City of Chester*, (1694) 87 All ER 487 (F) has been approved of even in this decision and therefore this case does not help the Petitioners. In my opinion, the general rule that there should be a separate petition for a separate writ is a rule of practical convenience warranted by the nature of the proceeding.

It should have been followed in the present petition. As ten Petitioners have joined in the present petition against this rule, I direct that this petition be treated as one application about one impugned order against one particular Petitioner according to the selection of the applicant which should be made within two weeks from this day. The other, applicants, if they are so advised, may the

separate petitions with regard to the order with which they are concerned. If the applicant fails to make the selection and amend the petition so as to retain one Petitioner within the said period the application shall stand dismissed.