

(1972) 03 RAJ CK 0019
In the Rajasthan High Court
Case No : Civil Writ Petition No. 45 of 1971

Kalyan Mal Jaisani

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 03-03-1972

Acts Referred:

Constitution of India, 1950 — Article 226
Rajasthan Social Education Board Act, 1961 — Section 3

Citation : AIR 1972 Raj 234 : (1972) RLW 164 : (1972) WLN 152

Hon'ble Judges : V.P. Tyagi, J

Bench : Single Bench

Advocate : Marudhar Mridul, for the Appellant; S.K. Tewari, Dy. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

V.P. Tyagi, J.—Kalvanmal Jaisani has filed this writ petition under Article 226 of the Constitution praying that a writ of mandamus, or any other appropriate writ. order or direction be issued to the State Government to immediately constitute a Board in accordance with the provisions of Section 3 of the Rajasthan Social Education Board Act, 1961 (hereinafter called the Act).

2. The petitioner's case is that the State legislature enacted a law known as the Rajasthan Social Education Board Act, 1961, whereby a legislative mandate was issued to the Government to constitute a Social Education Board for Rajasthan u/s 3 of the Act. His grievance is that the State Government has not carried out this legislative directive for the last 11 years and. therefore, this Court may issue a writ of mandamus to the State Government to constitute the said Board.

3. The petitioner while filing this writ petition averred that he is deeply interested in the Social Education in the sense that he was responsible for under-taking number of projects such as Village Leaders Training Camps, production of literature for new literates and continuing education programme etc. etc. He also mentioned that he is associated with the Rajasthan Vidyapith, Udaipur. wherein

he is Director of the Adult & Social Education Department. He is also a life member of Indian Adult Education Association, New Delhi. He further mentioned that he was the Secretary-General of the All India Seminar on Adult Education held in 1956 and. therefore, he is deeply interested in the constitution of the Board.

4. A reply has been filed on behalf of the State Government where the interest of the petitioner in the spread of Adult Education has been admitted but it is averred that the petitioner has no locus standi to file this writ petition as he has no personal interest and he has not been in any manner prejudiced for not constituting the Board u/s 3 of the Act. The State Government also averred in its reply that formerly there were posts of Social Education Organisers and District Social Education Officers to look after the work of the Social Education but now the work of the Social Education is carried on by better qualified personnel known as Education Extension Officers attached to the Panchayat Samitis in rural areas, and Sub Deputy Inspectors in urban areas. According to the State, the minimum qualification prescribed for such personnel are degree in Arts/Science/Commerce with degree in Education, whereas no such qualifications were prescribed for the posts of the Social Education Organisers in the past who were generally Matriculates or Intermediates. It is further contended that the work of the Extension Officers and the Sub Deputy Inspectors is supervised by the Deputy Inspector of Schools and Inspector of Schools under the directions of the Deputy Director (Social Education). Raiasthan. who. in turn functions under the Director of Primary and Secondary Education. Raiasthan. According to the tenor of this reply an effort is being made by the State to show that the Government is co-ordinating the work of the social education carried on by voluntary and private educational institutions by the Deputy Director (Social Education). Raiasthan. It is. however, admitted that the Board could not be constituted for various reasons up-till now. During the course of arguments. learned Deputy Government Advocate urged that the State Government is watching the developments in other States in the growth of Social Education and it is likely that at the appropriate time the Board may be constituted u/s 3 of the Act.

5. These rival contentions made by the parties raise an important question whether a person who has no personal interest in the matter or who has not been prejudicially affected by the act of the State can file a writ petition demanding the issue of a writ of mandamus.

6. Mr, Mridul. appearing on behalf of the petitioner, has argued that the language of Article 226 of the Constitution confers a very wide power on this Court to issue writs to any person or authority, including in appropriate cases any Government, in the nature of habeas corpus. mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the rights conferred by Part III of the Constitution and for any other purpose. Besides issuing the writs, this Court has been conferred with an authority to issue appropriate order or direction and, therefore, he urged that the limitations that have been put on the Courts in

England for issuing the prerogative writs should not fetter the powers of this Court to issue in appropriate cases orders or directions even if personal interest of a person who comes to this Court may not be involved. In support of this contention. Mr. Mridul placed reliance on certain decisions of the Supreme Court viz. Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, and Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, and also on the decision of the King's Bench Division reported in the King v. Manchester Corp. (1911) 1 KB 560.

7. Learned Deputy Government Advocate, on the contrary, urged that personal rights or interests are the sine qua non for issuing writs, orders or directions under Article 226 of the Constitution, and in support of this argument he placed reliance on the same authority of the Supreme Court in Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, He also referred to certain passages in Halsbury's Laws of England and also cited a recent judgment of the Mysore High Court in Dr. Rudriah v. Chancellor. U. A. S. Bangalore. AIR 1971 Mys 84.

8. In Dwarka Nath Vs. Income Tax Officer, Special Circle D-ward, Kanpur and Another, the Supreme Court has observed:

This article (Article 226) Is couched in comprehensive phraseology and it ex facie confers a wide power on the High Court to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be exercised. It can issue writs in the nature of prerogative writs as understood in England: but the scope of those writs also is widened by the use of the expression "nature", for the said expression does not equate the writs that can be issued in India with those in England." but only draws an analogy from them. That apart High Courts can also issue Directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the English Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small country like England with a unitary form of Government to vast country like India functioning under a federal structure. Such a construction defeats the purpose of the article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the article and others may be evolved to direct the article through dened channels."

9. This passage undoubtedly gives an indication of the wide powers conferred on the High Courts in India by the Constitution, but this decision does not resolve the controversy which has been raised by the State Government in this case. These observations are, therefore, hardly of any avail to throw light on the real issue to be determined by this Court.

10. In *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, this question whether a person having no personal interest in the matter has a locus standi to invoke the jurisdiction of the High Court under Article 226 of the Constitution or not was directly in issue, and the Supreme Court while deciding it observed as follows:

"Article 226 confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental right can also approach the Court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply thereunder: but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right..... The right that can be enforced under Article 226 also 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".

11. In that case the petitioner had filed a writ petition for the issue of mandamus in connection with the setting up of a Primary Health Centre for which the villagers had collected a fund of Rs. 10,000/- and the petitioner was the Chairman of the Committee set up by the villagers for that purpose and it was in that capacity that the writ petition was filed by the petitioner.. It was in that background that the learned Judges traced the right of the petitioner to entitle him to take resort under the provisions of Article 226 of the Constitution and observed:

"The appellant was, therefore, a representative of the committee which was in law the trustee of the amounts collected by it from the villagers for a public purpose. We have, therefore, no hesitation to hold that the appellant had the right to maintain the application under Article 226 of the Constitution. This Court held in the decision cited supra *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, that "ordinarily" the petitioner who seeks to file 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. A personal right need not be in respect of a proprietary interest: it can also relate to an interest of a trustee. That apart, in exceptional cases as the expression "ordinarily" indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject-matter thereof."

(underlining is mine)

12. According to these observations of their Lordships the petitioner must have either personal or individual right in the subject-matter or must have been prejudicially affected by the order of the authority against whom a relief is sought in the proceedings under Article 226 of the Constitution. This decision of

the Supreme Court, to some extent, opens the doors of this Court for such persons who have no personal or fiduciary interest in the subject-matter, but it is essential that they must be prejudicially affected by such act of the authority against whom a relief is sought in a petition under Article 226 of the Constitution.

13. In (1911) 1 K B 560 this question has been discussed at length as to whether a person who has no interest in the subject-matter of the petition can approach the Court for a writ of mandamus or not. An argument was advanced before the Court in that case that a very slight special interest is enough to support an application for mandamus, and it was urged that it was not necessary that a person who is invoking the jurisdiction of a Court must have a personal interest in the subject-matter of the petition. In that case a writ petition was filed for issuing a rule for mandamus to the Corporation of Manchester to make by-laws in compliance with the provisions of the local Act. The interest shown in that case was that the Bill before the Parliament was opposed by the petitioner and it was on that opposition that Section 44 was ultimately incorporated in the Act of 1900 to protect the interest of the petitioner. The learned Judges were of opinion that the position of the petitioner in that case was superior to that of a common informer inasmuch as the petitioner was responsible for having procured the insertion in the Bill of a special clause for the protection of the general public and through them of their own trade interests also, and in that view it was held that the petitioner could invoke the jurisdiction of the Court for the issue of a rule for mandamus in that case.

14. Lord Avory J. who, however, differed with the majority, observed, while approving the principle laid down in *Reg. v. Lewisham Union* (1897) 1 QB 498:

"The prosecutor must be clothed with a clear legal and equitable right to something which is properly the subject of the writ, as a legal right by virtue of an act of Parliament..... When a party comes to this Court with some kind of personal right, and asks to have a duty of some one else towards him ordered to be performed by mandamus, he stands in a totally different position. When a person who has no such individual right comes to the Court and asks to have a statutory or other duty performed the matter stands in a wholly different position. Although it is true that that is not the ground on which the rule was there refused that was a statement of the law which I believe to be perfectly accurate, and which seems to me to apply to the present case. In my opinion the Court is not entitled to take notice of what we are told took place in the committee room when this Bill was before the House. It does not appear to me that that confers upon the applicant the kind of legal personal right which is referred to in the judgments which I have cited. For that reason I doubt whether the applicants are persons who can properly apply for this writ."

15. If we read these observations of Avory J. with what have been observed by the Supreme Court in *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, I am left in no doubt that a person who has no personal interest in the subject-matter of the writ petition or who has not been

prejudicially affected by the Impugned act cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution.

16. In Halsbury's Laws of England, Third Edition. Volume 11. at page 105. it has been laid down that "the legal right to enforce the performance" of a duty must be in the applicant himself. The Court will, therefore, only enforce the performance of statutory duties by public bodies on the application of a person who can show that he has himself a legal right to insist on such performance. The fact that a person who opposed a bill before Parliament has obtained the insertion in it of a clause for the protection of the general public, gives that person a special interest in the performance of the duty imposed by the clause entitling him to apply for a mandamus, although his name does not appear in the clause; but the mere fact that a person is interested in the performance of a duty as a member of a class of persons, all of whom may be regarded as equally interested, but himself having no particular ground for claiming performance, or that he has some ulterior purpose to serve, but no immediate interest on his own or any other person's behalf, will not be sufficient grounds for granting a mandamus."

17. In AIR 1971 Mys. 84 . the appointment of the Vice-Chancellor of the Mysore University was challenged by the petitioner. A preliminary objection was raised that the petitioner had no locus standi to challenge the appointment as he was not personally interested in the matter. Their Lordships of the Mysore High Court, while deciding that issue observed that this allegation of the petitioner that he was interested in the development of agriculture in Mysore State and in the proper functioning of the Agricultural University was not sufficient to maintain the petition as the petitioner could not show that he had any special interest in the subject-matter of the petition so as to treat his case as an exceptional one as laid down by Subba Rao J. (as he then was) in the case of Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others, and. therefore, the case of petitioner Patil was not considered to be an exception to the general rule that the petitioner must have a personal interest or he must be prejudiced by the act of an authority.

18. In the instant case, the petitioner has stated that he is deeply interested in the formation of the Board as he has interest in the spread of social education in the sense that he was responsible for undertaking various projects to promoting the social education in the State and that he was associated with the activities that could further the cause of social education in this area. This interest of the petitioner in view of what has been discussed above is not sufficient to entitle him to invoke the jurisdiction. under Article 226 of the Constitution.

19. Mr. Mridul next urged that looking to the interest shown by the petitioner and the position held by him in Vidya Pith he is likely to be nominated on the Board by the State Government if constituted under the provisions of Section 3 of the Act and. therefore, he is prejudiced by not forming a Board u/s 3 of the Act. This argument of Mr. Mridul cannot cut much ice because his nomination on the Board

is not certain and. therefore, on this assumption that he might be nominated on the Board he should feel aggrieved by not carrying out the mandate of the legislature by the State Government. On this ground also. I do not feel that the petitioner has a right to invoke the extraordinary jurisdiction of this Court.

20. The petition. therefore, fails and it is hereby dismissed. nO order as to costs.