

(1976) 01 OHC CK 0009
In the Orissa High Court
Case No : O.J.C. No. 469 of 1974

Kasinath Tripathy and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 07-01-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1976 Ori 191

Hon'ble Judges : S.K. Ray, J;N.K. Das, J

Bench : Division Bench

Advocate : S. Misra, 1, S.C. Misra, S.K. Nayak and Nita, for the Appellant; R.N. Das, P.K. Das, J. Swain and K.M. Das and A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

Das, J.—The two petitioners who are residents within the area of the Rambha Notified Area Council have filed this petition under Article 226 of the Constitution of India for issue of a writ of certiorari or any other suitable writ quashing the order of the Government allowing the appeal of the Head Clerk of the Rambha N. A. C. in a disciplinary proceeding against the Head Clerk.

2. The petitioners contend that opposite party No. 3 was appointed as Head Clerk of the Rambha N. A. C. Several charges were framed against him and after enquiry he was discharged from service. As against the said order opposite party No. 3 preferred appeal as provided u/s 77 of the Orissa Municipal Act to the State Government. The State Government allowed the appeal of opposite party No. 3 and directed to reinstate him. During the pendency of the appeal the post of Head Clerk was abolished by the N. A. C. After receipt of the Government order the Executive Officer wanted clarification from the Government and he has been informed that the order of the Government is to be complied with. The petitioners challenge the Government order on the ground that the order of reinstatement is illegal as there was no post of Head Clerk in the N. A. C. while the Government order was passed. The petitioners contend that as they are

taxpayers their interest is vitally affected if the order of the Government is implemented. It is further contended that opposite party No. 3 was not qualified and also was not otherwise eligible for the post of Head Clerk as provided under the Orissa Municipal Rules.

3. A preliminary objection was raised by the opposite parties that the petitioners had no locus standi to challenge the order of the Government as they have no right either legal or personal or proprietary to give rise to a cause of action for this petition. It is contended that the petitioners being merely tax-payers and the N. A. C. having not launched any new scheme financially affecting the funds of the N. A. C. the petitioners can have no grievance in such a matter and they have no right to invoke the extraordinary jurisdiction of this Court. On the other hand, it is contended by the petitioners that as the Government order for reinstatement of opposite party No. 3 affects the financial position of the N. A. C., they as taxpayers, are vitally interested and as such can enforce their right.

4. It has been repeatedly held by the Supreme Court that a person having no legal or personal right or any property right cannot invoke the writ jurisdiction of the High Court. Indisputably no fundamental right of the petitioners has been affected in any way. The contention of the petitioners is that as they are taxpayers they are interested in the expenditure to be made by the N. A. C. for payment of the back dues of opposite party No. 3 when his appeal was allowed by the State Government and the N, A. C. was directed to reinstate opposite party No. 3.

It appears from the petition filed by the petitioners that they were Councillors of the N. A. C. while opposite party No. 3 was discharged from service. They passed a resolution abolishing the post on the day following the day when opposite party No. 3 preferred appeal before the State Government u/s 77 of the Orissa Municipal Act. It is thus clear that the intention of the petitioners was to see that some how or other opposite party No. 3 is not retained in service. Ultimately the appeal filed by opposite party No. 3 was allowed and he was directed to be reinstated. In ordinary course opposite party No. 3 has a right to be reinstated when his appeal is allowed. The post was in existence at the time when the punishment of discharge from service was imposed on opposite party No. 3. Only during the pendency of the appeal before the State Government the N. A. C. passed a resolution abolishing the post. After the appeal has been allowed and opposite party No. 3 has been directed to be reinstated, it is the duty of the N. A. C. to reinstate opposite party No. 3 in a suitable post. The N. A. C. has not come with any grievance against the order of the Government. The two petitioners who were parties to the subterfuge played by the N. A. C. for abolition of the post during the pendency of the appeal by opposite party No. 3, have come up with the present writ petition objecting to the order of the State Government. The dispute, if any at present, is between the N. A. C. on the one hand and opposite party No. 3 on the other. But none of them have filed the application objecting to the order of the Government and asking for any relief. This is not a case where

the N. A. C. has taken recourse to launching a new adventure which was not in existence beforehand and such an adventure vitally affects the finance of the N. A. C.

5. Reliance was placed on behalf of the petitioners on the case *Vaman v. Municipality of Sholapur* ILR 22 Bom 646. The question of maintainability of a suit at the instance of an individual taxpayer against the Municipality to restrain it from misapplying its funds arose for consideration in that case. It was held that the plaintiffs can sue in their individual capacity if they are sufficiently interested in the municipal fund, and secondly, that any interest however small is sufficient to entitle them to do so. This decision was followed by another Bench decision of the Bombay High Court in *The Municipal Corporation for the City of Bombay Vs. Govind Laxman Savant*, . The same view was taken by the Calcutta High Court in *Narendra Nath Chakravarty Vs. Corporation of Calcutta and Others*, . The result of the aforesaid decisions is that where a Corporation or a statutory body acts in excess of its statutory powers and misapplies its funds, a shareholder of the Corporation or a rate payer is entitled to maintain a writ to prevent the Corporation or the local authority from acting beyond the scope of its authority.

Reliance was also placed on *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, . In that case it was held that Article 226 of the Constitution of India 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 legal right. The right that can be enforced under Article 226 also shall ordinarily be personal or individual right of the petitioner himself, though in case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified. The appellant in that case was the President of the Panchayat Samiti. The villagers formed a committee with the appellant as President for the purpose of collecting contributions from the villagers for setting up the Primary Health Centre. The said committee collected Rs. 10,000/- and deposited the same with the B. D. O. The appellant represented the village in all its dealings with the Block Development Committee and the Panchayat Samiti in the matter of location of the Primary Health Centre. His conduct, the acquiescence on the part of other members of the committee, and the treatment meted out to him by the authorities concerned support the inference that he was authorised to act on behalf of the committee. 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. It was, therefore, held that the appellant had the right to maintain the application under Article 226 of the Constitution.

6. In *Nain Sukh Das and Another Vs. The State of Uttar Pradesh and Others*, it was held that the scope of the remedy under Article 32 is restricted solely to enforcement of fundamental rights conferred by Part III of the Constitution. Any right which the petitioners may have as rate payers in the Municipality to insist that the Municipal. Board should be legally constituted and that respondents,

who are not properly elected or nominated members, should not be permitted to take part in the proceedings of the Board, is outside the purview of Article 32, as such right even if it exists is not a fundamental right conferred by Part III.

In *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, it was held that except in the matter of writs in the nature of habeas corpus no one, but those whose rights are directly affected by law, can raise the, question of maintainability of that law and claim relief under Article 32. Article 32 of the Constitution can be invoked for safeguarding fundamental rights only, resort can be had to Article 226 for safeguarding other legal rights also. So far as the locus standi of a person to move the Court is concerned, there does not appear to be any difference between Article 32 and Article 226 of the Constitution.

In *The State of Orissa Vs. Madan Gopal Rungta*, it has been held that the language of the Article shows that the issuing of writs or directions by the Court is founded only on its decision that the right of the aggrieved party under Part III of the Constitution has been infringed. It can also issue writs or give similar directions for any other purpose. The concluding words of Article 226 have to be read in the context of what precedes the same. Therefore, the existence of the right is the foundation of the exercise of jurisdiction of the Court under this Article. The dictum of their Lordships of the Supreme Court in *Madan Gopal Rungta's* case leaves no doubt about the fact that the existence of a right in the petitioner is the very foundation of the exercise of jurisdiction under Article 226 of the Constitution.

In *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, it was held after considering *Charanjit Lal's* case and *Madan Gopal Rungta's* case that 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. This dictum of the Supreme Court clearly implies that except in the cases of writs like habeas corpus or quo warranto, the only right that can be enforced under Article 226 of the Constitution is the personal or individual right of the petitioner. This principle was also reiterated in *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, . The principle laid down in *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, was also followed in a Full Bench decision of the Andhra Pradesh High Court in *Pamidimarri Chenchulakshmma Vs. The Estates Abolition Tribunal Nellore and Others*, .

This Court in a Division Bench had also occasion to consider such a question in *Sri Arjuna Sahu v. State of Orissa* 1973 (1) CWR 595. It was held in this case:

"It is a legal duty coupled with a loss to the plaintiff which is usually necessary to make out a prima facie case founded on substantial right and a mere naked or abstract right unattended by any substantial benefit to the relator would not be enforced by mandamus. Mandamus should be refused where, if granted, it does

not give any benefit."

7. The prayer by the petitioners in the writ petition is for issue of a writ of certiorari or any other suitable writ. Mr. Misra for the petitioners concedes that the petitioners were not parties to the proceeding and as such prima facie a petition for issue of a writ of certiorari is not maintainable. But he emphasises on the alternate prayer for issue of any other suitable writ. The observations made above would clearly show that even in case of issue of writ of mandamus there should be legal or personal right of the petitioner which is infringed and thereby prejudicially affects him. In the present case the petitioners are in no way concerned with the decision of the Government allowing the appeal of opposite party No. 3. The post of Head Clerk was in existence when opposite party No. 3 was discharged from that post by the N. A. C. After the appeal of opposite party No. 3 has been allowed it is for the N. A. C. to see that he is adjusted in a suitable post. This matter is internal between the N. A. C. and opposite party No. 3. The petitioners have no fiduciary relationship with the matter nor they are challenging any action of the municipality as tax-payers. It is not a case where the municipality started a new adventure not in existence beforehand and such an adventure affects the finance of the N. A. C. and the petitioners are affected thereby. Therefore, the decisions relied on by the petitioners are not applicable to the case. On the other hand, the petitioners have no legal or personal right which they can enforce in Courts of law. They have no locus standi to put forth the grievances made in the writ petition and as such the petition is not maintainable .

8. As we have already held that the writ petition is not maintainable, the other question raised by the petitioners does not arise for consideration. It is contended by the petitioners that opposite party No. 3 is not qualified and is not otherwise eligible for the post as provided in the Orissa Municipal Rules. This is absolutely a different question and has no bearing on the disciplinary proceeding started against opposite party No. 3 or the order of the Government allowing the appeal. It is a matter between the N. A. C. and opposite party No. 3.

9. In the result, the writ petition fails and is dismissed; but in the circumstances of the case without costs.

S.K. Ray, J.

10. I agree.