(1981) 11 KAR CK 0010

In the Karnataka High Court

Case No : Writ Appeal No. 1298 of 1981

Ramesh Pande and Others APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 04-11-1981

Acts Referred:

High Court of Karnataka Writ Proceedings Rules, 1977 — Rule 7, 7 (2)
Karnataka Sales Tax Act, 1957 — Section 10, 11, 6, 6 (3), 6 (4)

Citation : AIR 1982 Kar 343 : (1982) ILR (Kar) 344 : (1982) 1 KarLJ 466

Hon'ble Judges : D.M. Chandrashekar, C.J;N. Venkatachala, J

Bench : Division Bench

Advocate : Nath Rao Patil, for the Appellant; M.R. Achar, Addl. Govt. Advocate, for the Respondent

Judgement

N. Venkatachala, J.—By consent of learned. counsel, this appeal was treated as having been posted for hearing and we heard them.

2. This appeal is from the order dated 31-8-1981 of Chandrakantaraj Mrs, J. in writ petition of Ramesh Pande and others of 1981 regarding the court-fee payable on that petition. The petitioners therein have presented this appeal and for the sake of convenience, they will hereinafter be referred to as the petitioners.

3. Petitioners, thirteen in number, who are individually engaged in vending liquor in different towns of Karnataka, presented a writ petition under Article 226 of the Constitution, impugning the constitutional validity of new Section 6-11 of the Karnataka Sales Tax Act, 1957, substituted by the Karnataka Sales Tax (Amendment) Act, 1981 (hereinafter referred to as ''the Impugned taxing provision''). On that petition, a court fee of, Rs. 100 had-been paid. The office of this Court raised an objection to the effect that proper, court-fees payable on that. petition in which thirteen petitioners had joined, was Rs. 1,300 and the petitioners had to make good the deficient court-fee of Rupees 1200. The learned single Judge, who heard that office objection, upheld it.

4. The question as to the court-fee payable on a writ petition filed by more than one petitioner, impugning a taxing provision imposing tax upon them, arises for our decision in this appeal.

5. The court-fee payable on a petition under Article 226, is prescribed by Clause (S) of Article 1 of Sch. II to the Karnataka Court-fees and Suits Valuation Act, 1958 (hereinafter referred to as ''the Act'') which reads :"Petition to the High Court under Article 226 of the Constitution for a writ other than the writ of habeas corpus................ one hundred rupees".

6. Material portions of R. 7 of the Writ Proceedings Rules, 1977 (hereinafter referred to as ''the Rules''), which deals with the procedure for filing common or joint writ petition in this Court, as that Rule stood when the instant writ petition was presented, reads thus:-

"7. Procedure for filing common or joint petitions :-

(1) Several persons having similar but separate and distinct interest in the. Subject matter of controversy involving common questions of law and facts may file a common petition. Such a petition shall be treated as equivalent to the filing of such number of writ petitions as there are petitioners and shall be numbered accordingly and the court fee payable on such writ petition shall , be numbered accordingly and the court-fee pay able on ''such writ petition shall be the same as payable on the number of writ petitions, w I hen filed separately ......

(2) Several persons having common or joint interest but not seeking any individual relief may file a single petition.

Explanation:- For the purpose of this sub-rule, persons shall be considered to have common interest if the relief sought for by a single petitioner, if granted, would ensure to the benefit of the other petitioners, even if they had not joined as petitioners, irrespective of ''the interim relief''s sought for, by the petitioners.

Provided that no. final individual relief, consequential or otherwise, is sought for in the petition" -

7. Shri Kashinathrao Patil, learned Counsel for the appellants petitioners contended that the petitioners have a common interest in the subject matter of controversy in the writ petition inasmuch as they have all challenged therein the constitutional validity of the impugned taxing provision and that this is not a case where each of them has a separate and distinct interest in such subject matter. He maintained that it is sub-r. (2) of Rule 7 of the Rules and not sub-rule (1) thereof, as it stood when the writ petition was presented which governed the matter. He strongly relied on the Explanation to sub rule (2) and submitted that in view of that Explanation, the petitioners must be regarded as having a common interest in the subject matter of controversy in the writ petition because, as contemplated therein, if the impugned taxing provision is declared to be invalid in a writ petition presented by only one of the petitioners, such declaration would ensure to the benefit of all other petitioners therein even if

they had not joined as such petitioners. Sri Patil further contended that in view of the proviso to sub-rule (2), the mere fact that the petitioners had also sought for an interim order in respect of each of them, did not deprive them of the benefit of that sub-rule.

8. The learned Addl. Government Advocate, on the other hand, contended that each of the petitioners is separately aggrieved by the levy of the impugned taxing provision as each'' of them is carrying on business separately and not jointly with the others and has a separate and distinct interest though similar or identical. fie also contended that the present writ petition is governed by sub rule (1) and not by sub-rule (2) of Rule 7 of the Rules that hence the explanation to sub-rule (2) was not attracted. He maintained that the court-fee payable on a writ petition under Article 226 of the Constitution, is since prescribed under Clause (s) I of Article I of Schedule 11 to the Act, the filing of a joint or a common writ petition by more than one person as permitted under the Rules made by the High Court, by itself, is not sufficient to relieve them of their liability to pay aggregate amount of court-fee under sub-section (3) read with sub-section (4) of Section 6 of the Act as, if they had filed individual and separate writ petitions.

9. Whether the petitioners in the present writ petition, should be regarded as those who have a common or joint interest in the subject matter of. Controversy therein or as those each of whom has a separate land distinct interest in such subject matter, is a point which requires our decision before we can proceed to deal with the question as to whether sub-rule (1) or sub-rule (2) of R. 7 of the Rules, applies to the present case.

10. As there are decided cases, which throw light on this point, we shall refer to them at the outset.

11. In Management of Rain Bow Dyeing Factory Salem and Others Vs. Industrial Tribunal, High Court Buildings, Madras and Another, , the facts were these . By its order, the Government of Madras had referred to the Industrial Tribunal, Madras for adjudication, various issues relating to conditions of service of employees in 30 industrial concerns engaged in dyeing yarn and cloth. The Tribunal''s common award was impugned in a single writ petition by those 30 concerns.

The Madras High Court, on consideration of the said facts, ruled that the interest of the 30 concerns although similar, were several and distinct and therefore each of them had to file a separate writ petition and pay the court-fee thereon.

12. The above ruling was followed by this Court in Mount Corporation v. Director of Industries AIR 1965 Mys 143 : 1964 1 Mys LJ 513. There the petitioners had sought to challenge in one writ petition the actions of the State Government on the basis of which their applications for licence of stainless steel. were rejected. The Court held that each of the petitioners had distinct and separate interest as distinguished from common or joint interest, in the subject matter of controversy

in the writ petition and hence could not maintain a common or joint writ petition.

13. In Chandmal Naurat Mal and Others Vs. State of Rajasthan and Another, petitioners had filed a joint writ petition praying for a mandamus restraining the State of Rajasthan from enforcing the levy imposed upon them by the Rajasthan Agricultural Produce Markets Act, 1961. Dave,C. J., who spoke for the Bench, said that the injury which each of the petitioners might suffer by the impugned levy, could only be said to be separate and not common.

14. In Vasudevan Embraudiri and Others Vs. Cherpu Service Co-operative Bank Ltd. and Others, petitioners had filed. a writ petition challenging a decision of the Co-operative Appellate Tribunal. On the question of court-fee payable on such petition, the Kerala High Court held that where a plurality of petitioners or appellants, having separate and individual interest in the subject matter of the petition or the appeal, joined hi one action, although only one petition or appeal may be filed, court-fee has got to be paid separately on the petition or the appeal by each one of the petitioners-appellants, having an individual interest.

15. Coming to the case of petitioners in the present writ petition, all of them are not carrying on business of vending liquor jointly but each of them is carrying on his own business of vending liquor separately. Can it be said that such petitioners have a common interest? Common interest is not the same as similar interest. Where several persons claim an interest in the subject matter of controversy, as members of a class or community or residents of a locality, they can be said to have a common interest in respect of such subject-matter. An example of such common interest is the interest of the villagers to graze their cattle in the village pasture of Gomal land. Another example of such common interest is the interest of members of a religious denomination to immerse a deity in a particular tank.

16. Petitioners in the present writ petition do not claim to have any common interest in the subject-matter of controversy as members of a class or community or residents of a locality or the like. Each of them carrying on his individual business of vending liquor, has joined in the present writ petition, for challenging the impugned taxing provision. Each of them has so joined as he stands to suffer an individual injury under the impugned taxing provision. The injury which each of them suffers, can only be regarded as separate and distinct injury though it may be similar to the one suffered by others. Hence, each of the petitioners has only a separate and distinct interest and not common or joint interest in the subject matter of controversy in the writ petition, that is, the impugned taxing provision. Thus, though on the authority of the decided cases and on principle, the interest of each of the petitioners in the subject matter of controversy in the writ petition, should be regarded as separate and distinct and not common, the Explanation to sub-rule (2) of Rule 7 of the Rules speaks to the contrary. Shri Kashinaihrao contended that if the impugned taxing provision is declared to be unconstitutional in a writ petition presented by one of them, that provision cannot be enforced against other petitioners even if they had not joined as petitioners because of the deemed meaning given by the explanation to the

term ''common interest''. Shri Kashinathrao is right in relying on that explanation to contend that the petitioners should be regarded as having a common interest in the subject-matter of controversy in the writ petition and that hence they are entitled to present a single writ petition.

17. But, what was argued by the learned Additional Government Advocate was this Even if the deemed meaning given to common interest in the explanation to sub rule (2) of Rule 7 of the Rules, has enabled the present petitioners to present a single or common or joint writ petition under sub rule (2) thereof, challenging the impugned taxing provision, it does not, by itself, relieve them of their liability to pay the aggregate amount of the court-fees payable by each of the petitioners on that petition as required under sub-section (3) read with sub s. (4) of S. 6 of the Act. The argument of the learned Additional Government Advocate in our view merit acceptance.

Sub-sections (3) and (4) of Section 6 of the Act read:-

"(3) Where a suit embraces two or more distinct and different causes of action and separate relief''s are sought based on them, either alternatively or cumulatively, the plaint shall be chargeable with which plaints would be chargeable under the Act if separate suits were instituted in respect of the several causes of action.

(The provision is omitted as it is not relevant for the present purpose).

(4) The provision of this section shall apply mutates mutandis to memoranda of appeals, applications, petitions and written. statements."

(The explanation is omitted as it is not relevant for the present purpose).

18. As already pointed by us, each of the petitioners has a separate and distinct interest in the subject-matter of controversy in the writ petition, that is, the taxing provision impugned therein, because of the individual injury which each of them stands to suffer under the impugned taxing provision. From this, it follows that each of the petitioners has a separate and distinct cause of action in respect of the impugned taxing provision. Therefore, if a writ petition embraces two or more separate and distinct interest (causes of action) of several petitioners, who seek separate relief''s based on those interests (causes of action), it (the writ petition) becomes liable to be charged with the aggregate amount of court-fees with which petitions would be chargeable under the Act if separate writ petition had been presented in respect of the several separate and distinct interest (causes of action), as provided for in sub-section (3) read with sub-section (4) of Section 6 of the Act.

19. The question whether it can be said that, a common writ petition embraces two or more causes of action as would make the petitioners therein liable for payment of separate court-fees as if each of them had presented separate writ petitions, having come up for consideration before the Supreme Court in Mota Singh and Others Vs. State of Haryana and Others, it has answered that question

thus:

"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. 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 person 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 per son would be liable to pay legally pay able court-fee on his petition. It would be a travesty of law if one were to hold that as each one uses a high way, he has common cause of action with the rest of truck pliers".

The above pronouncement of the Supreme Court in our view, puts it beyond doubt that each of the petitioners in the present writ petition, has his own distinct and separate cause of action arising out of his liability to pay the tax individually under the impugned taxing provision. Since the present writ petition embraces more than one of such causes of action and separate relief''s sought therein, namely, to restrain the respondents from enforcing the impugned taxing provision against each of the petitioners, are based on them (such causes of action), it (the present writ petition) is chargeable with the aggregate amount of the court-fees with which the petitions would be chargeable under the Act '' if separate writ petitions had been presented in respect of several causes of action, a required by sub-section (3) read with substitution (4) of Section 6 of the Act.

20. Hence, we uphold the contention of the learned Addl. Government. Advocate that under Clause (S) of Article I of Sch. II of the Karnataka Court-fees and Suits Valuation Act, 1958 read with sub-sees. (3) and (4) of Section 6 of that Act, each of the petitioners, in the present writ petition, is liable to pay thereon a separate court-fee of Rs. 100, as if he had presented a separate writ petition. Consequently, we uphold the ruling of the learned single Judge, as regards the aggregate amount of court-fees payable on the present writ petition.

In the result, we dismiss this appeal.

However, in the circumstances of this appeal, we direct the parties to bear their own costs.

21. Appeal dismissed.

