

(2005) 02 GAU CK 0022
In the Gauhati High Court

Thoubal District Farmers Association for Natural Calamities,	APPELLANT
Vs	
State of Manipur and Ors.	RESPONDENT

Date of Decision : 28-02-2005

Acts Referred:

Citation : (2005) 02 GAU CK 0022

Hon'ble Judges : T.Nanda Kumar Singh, J

Bench : Single Bench

Advocate : R.S.Reisang, B.P.Sahu, Advocates appearing for Parties

Judgement

1. Heard Mr. B.P Sahu, learned counsel for the petitioner as well as Mr R. S. Reisang, learned Addl. G.A for the respondents.

2. As agreed by both the parties this writ petition is taken up for a limited point as to whether an unregistered Association can file a writ petition under Article 226 of the Constitution of India for violation of the fundamental rights guaranteed by the Constitution of India or not? The writ petitioner, an unregistered association is formed by all the farmers residing within Thoubal District, Manipur whose paddy plants grown in their respective fields, pisciculture farms as well as other farms were grossly affected by the flood that occurred in the year 2002. The acts of Government of Manipur declining to give financial assistance to the members of the writ petitioners (unregistered association) for damage caused due to the natural calamities are illegal unlawful, arbitrary, malafide, biased, discriminatory and vindictive to the extent that their Fundamental Rights guaranteed by the Constitution of India had been deprived. Learned Addl. G A submits that that the petitioners association being not a registered body has no legal entity to sue or be sued. It appears that nothing has been placed before this court to show that the petitioner association is a legal entity as provided under any specific statutory provision to sue or be sued collectively. Learned Addl. G A submits that where a number of individuals are affected by a common act or a common legal proceeding, there is a procedure for filing joint writ petition to challenge that act . In this regard, learned Addl.

G.A draws the attention of this court to proviso to Rule 1 of Chapter VA Gauhati High Court Rules and it provides that more than one individual can jointly file a single writ petition on each of them paying court fee payable on such application. In the present case, it is not the situation where the individuals i.e the farmers whose paddy fields seriously affected by the flood that occurred in the year 2002 jointly file a single writ petition on each of them paying court fee for filing such application. It appears that the present writ petition is not file in compliance with the said proviso to Rule 1 of Chapter VA of the Gauhati High Court Rules. The matter regarding maintainability of writ petition filed by an unregistered association have been discussed by this court in All Manipur DIC Supervisors" Association vs. State of Manipur & Ors., 2001 (1) GLT 374 wherein this court held that the writ petition filed by an unregistered Association is not maintainable. Paras 14,15 and 16 of GLT in the case of All Manipur DIC Supervisors" Assn. vs. State of Manipur & Ors. (Supra) are quoted below :

? 14. This is not a public interest litigation. Admittedly, the petitionerassociation is not registered under the Societies Registration Act, 1860 or under any other statute. A technical point is taken in paragraph 2 of the affidavitinopposition that the petitioner Association , not being a registered body is not a legal entity which can sue or be sued in its name. On this point, in paragraph 3 of the rejoinder affidavit, it is stated ? the petitioner Association having disclosed the names and service particulars of its members in an Appendix to the writ petition, has got legal entity to sue and be sued in law, though it has not been registered?. Obviously, such disclosure does not confer any legal entity on the petitioner Association to maintain a legal proceeding. Nothing has been placed before me to show that the petitioner Association, though not a legal entity is permitted to by any specific statutory provision to sue or be sued in its collective capacity. Mr. T.Nandakumar, learned Advocate General, submits that the petitioner Association, not being a registered body having legal entity, this writ petition filed by its not maintainable and liable to be dismissed on this score alone. Where a number of individuals are affected by an official act, they can ordinarily bring a legal proceeding to challenge that act only if all such persons joined in the proceedings by name. In the instant case, all the members of the petitioner Association who have been adversely affected by the impugned Government order. AnnexureA/14 dated 13.1.94 ought to have joined in the writ petition by name. It has been held in DGOF Employees" Association v. Union of India, reported in AIR 196 9 Calcutta 149 (151) that

?9. In the case of a body incorporated by law, the corporate body acquires a legal personality of itself and is as such entitled to maintain legal proceedings. But an unincorporated association has no legal personality and it is nothing but an aggregation of its members who can only bring legal proceedings in their individual capacity. Even when all of them by an official act, they can challenge that only if all the members join in the proceedings by name, the association, in such a case, cannot maintain an application under Article 226 or other legal proceeding in its own name, as has been established by a number of decisions.

15. Even where an association is permitted by law to bring a legal proceeding, it can bring an application under Art.226 only when its rights as a collective body i\ \as distinguished from the aggregate rights of its members are affected by the act challenged in the proceedings. (Chiranjit Lal v. Union of India, AIR 1951 SC 41).?

15. Mr. A. Nilamani, learned senior counsel for the Association, however, contends that in the facts and circumstances of the case the instant petition should not be thrown out at this stage on the ground that it was filed by an unregistered Association. In this regard, Mr. Nilamani refers to the decision in Akhil Bharatiya Soshit Karmachari Sangh (Railway) vs. Union of India and others reported in (1981) 1 SCC 246 (281). This decision is clearly distinguishable . There the point raised was whether an unrecognized Association can bring a legal proceeding , and not whether an unregistered Association can do so, and in that case, learned Attorney General took no objection to a nonrecognized Association maintaining the writ petitions. Moreover the said decision speaks of "little Indians".

16. Mr.A.Nilamani placed reliance on another decision in Umesh Chand Vinod Kumar vs. Krishi Utpadan Mandi Samiti reported in AIR 1984 Allahabad 46 (58) which refers to the earlier decision as under :

"7. The question of "standing" was the subject of a passing observation by Krishna Iyer, J in Akhil Bharatiya Soshit Karmachari Sangh's case, AIR 1981 SC 298 (to which the other two learned Judges constituting the Bench did not avert to).

According to these observations the concept of "cause of action" and "person aggrieved" has become obsolescent in some jurisdictions, like "public interest litigation" by little Indians in large numbers seeking remedies in courts. In such a case alone an association of little Indians may be permitted to sue on their behalf. These observations graft an exception to the traditional rule of locus standi. They will not cover the case of an association suing on behalf of its members where its own interests are not affected and where its members do not answer the description of little Indians.

45. Our answer to the referred questions is as follows : A.1 The position appears to be that an association of persons, registered or unregistered, can file a petition under Article 226 for enforcement of the rights of its members as distinguished from the enforcement of its own rights.

(1) In case members of such an association are themselves unable to approach the court by reason of poverty, disability or socially or economically disadvantaged position ("little Indians")

(2) In case of a public injury leading to public interest litigation, provided the association has some concern deeper than that of a wayfarer or a busybody, i.e., it has a special interest in the subject matter.

(3) Where the rules or regulations of the association specifically authorize it to take legal proceedings on behalf of its members. So that any order passed by the court in such proceedings will be binding on the members. In other cases an association, whether registered or unregistered, cannot maintain a petition under Article 226 for enforcement of protection of the rights of its members, as distinguished from the enforcement of its own right.?

The learned Addl. G.A appearing for respondents also submits that the Full Court of the Madras High Court reported in AIR 1989 Madras 224 held that an unregistered association can not file a writ petition under Art. 226 of the Constitution of India. In other words, a writ petition under Art. 226 of the Constitution filed by an unregistered association is not maintainable. Para 6 of the AIR in Tamil Nadu Panchayat Development Officers Assn. (Supra.) is quoted hereunder :

?6. Accordingly the papers will be placed before My Lord, the Chief Justice, for appropriate orders.

Decision of Full Bench

VENKATASWAMI, J: 7. The question that has been referred to a Full Bench by a Division Bench to which one of us (Mohan,J. as he was than was) is as follows:

?Whether an unregistered association can maintain a writ petition under Art. 226 of the Constitution of India?

After going through the papers and on hearing the counsel, we are of the view that in view of R.2 B of the Rules framed by virtue of Art.225 of the Constitution, to regulate proceedings under Art.226 of the Constitution, this question pales into insignificance , as any body of persons who wish to jointly agitate a matter or espouse a common cause can invoke the benefit of the said rule. Accordingly, we hold that an unregistered Association cannot maintain the writ petition?.

3. The Apex Court in Mahinder Kumar Gupta & Ors. vs. Union of India, Ministry of Petroleum and Natural Gas reported in (1995) 1 SCC 85 held that the second writ petition stands liable to be dismissed on the sole ground that the Association cannot file a writ petition as it has no fundamental right under Art. 32 of the Constitution of India. Regarding the point about maintainability of the present writ petition filed by an unregistered Association, I am in respectful agreement with the order of the Id. Single Judge in All Manipur DIC Supervisors" Association. Vs. State of Manipur & Ors. (supra) that the writ petition filed by an unregistered Association is not maintainable.

4. For the reasons discussed above, the present writ petition is not maintainable and accordingly, the present writ petition is dismissed as not maintainable.