
(1959) 07 AHC CK 0017

In the Allahabad High Court

Case No : Civil Miscellaneous Application No. 70 of 1956 (O.J.)

Uma Shankar Rai and Others

APPELLANT

Vs

Divisional Superintendent, Northern Railway, Lucknow and Others

RESPONDENT

Date of Decision : 28-07-1959

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1960 All 366 : (1959) 29 AWR 664

Hon'ble Judges : V.D. Bhargava, J; R.A. Misra, J

Bench : Division Bench

Advocate : S.D. Misra, for the Appellant; B.N. Mulla, for the Respondent

Final Decision : Disposed Of

Judgement

V.D. Bhargava, J.

1. This application was referred to a Bench of two Judges by one of us on account of the fact that it was a joint application on behalf of four persons. In the opinion of the referring Judge a writ petition could be filed only by one unless their right was joint and inseparable. In case of a common right it is not open to the persons, who are affected by a common order to file a joint writ application. Since there was no reported decision of this Court on this matter, and since this matter often arises, hence this reference to a Bench. There was necessity of referring this case, particularly on account of certain remarks made in Manindra Nath Pal and Others Vs. Municipal Commissioners of Baranagore Municipality and Another, . In the opinion of Mr. Justice Sinha in that case it was held that this rule was a highly technical one of procedure, and should not be introduced in our law. In our view, writ jurisdiction is a special jurisdiction and is for the enforcement of an individual right and there can be no question of the application of Order 1 of the CPC to such proceedings. The learned Judge seems to have been influenced by the fact that this country is a poor country to bear litigants' expenses. That is a matter for the legislatures to consider in fixing the amount of court-fees, but we

do not see any reason to allow joint applications on that ground. If one wants a redress by way of a writ petition he comes in his individual right and stands on it, not jointly with others. This view has also been taken by several of the single Judges.

2. In *Rudra Dutta v. Dist. Board*, Civil Misc. Appln. No. 11 of 1956, D/-23-8-1956 (All), one of us had held :

"Two or more persons cannot join in a single application for a writ of mandamus to enforce separate claims. There must be separate applications for separate writs. In cases of joint ownership it may be possible by two or more persons to file a joint writ but, as in this present case, each individual has been assessed separately to Circumstances and Property Tax, each individual has a separate right. A writ petition can only be filed by a person whose interests are directly affected by a statute or an order claimed against and, therefore, each individual must file a separate application complaining of his rights which have been affected."

On this ground it was held therein that an application for writ of mandamus on behalf of 35 individuals was not entertainable. In the same case it was observed that in practice also wherever rights have been affected, separate writ applications have been filed by different applicants though the same order or statute was being challenged,

3. In Civil Misc. Appln. No. 30 of 1955 a Bench of this Court took the same view in its order dated 17-9-1956.

4. *Ferns* in his *Extraordinary Legal Remedies*, (1926 Edition), on the basis of American decisions, has observed as follows at page 275 :

"The rule is that persons having a common and joint interest in the subject-matter in controversy may be joined as relators while those having separate and distinct rights may not. In case of misjoinder the proceeding will be dismissed, the common law rule being that misjoinder is fatal to all, that the writ must be for all or none, that there cannot be one judgment for peremptory mandamus in favour of some of the relators, and another judgment in favour of respondent as to others. This is so whatever may be their right to join."

Under the English Law also it is not permissible for two or three applicants not having a joint right to join in a writ petition. See *Halsbury's Laws of England*, (Hailsham's Edition, Volume 9) at page 783, paragraph 1325, where this question has been dealt with in the following words :

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

5. In accordance with the observations made above, the petition should be

dismissed but as this law is not so far known and some of the writ petitions have been admitted without taking that fact into consideration, we think the applicants may be entitled to make the election. Under the circumstances learned counsel for the petitioners prays that he be given some time to consider the position and find out from his clients on whose behalf he will press the petition. He is accordingly given a fortnight's time to choose the applicant. Since this case was referred to a Bench on this point, we think now the writ petition itself can be disposed of by a single Judge, It need not be listed before a Bench.