

(1983) 09 AHC CK 0065

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 6538, 6886 and 8422 of 1980 and 13367 of 1981

Umesh Chand Vinod Kumar and Others

APPELLANT

Vs

Krishi Utpadan Mandi Samiti and Another

RESPONDENT

Date of Decision : 26-09-1983

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1984 All 46 : (1983) 9 AWC 881

Hon'ble Judges : Satish Chandra, C.J.;K.N. Singh, J;K.C. Agrawal, J

Bench : Full Bench

Advocate : S.P. Gupta and Rakesh Dwivedi, for the Appellant; B.D. Mandhyan, for the Respondent

Judgement

Satish Chandra, C.J.—A Division Bench of our Court has referred five questions of law to a larger Bench. The questions are--

1. Whether an association of persons, registered or unregistered can maintain a petition under Article 226 of the Constitution for the enforcement of the rights of its members as distinguished from the enforcement of its own rights?
2. Whether a single writ petition under Article 226 of the Constitution is maintainable on behalf of more than one petitioners, not connected with each other as partners or those who have no other legally subsisting jural relationship, where the questions of law and fact, Involved in the petition, are common?
3. In case the answer to question No. 1 is in the affirmative, whether only one set of court-fees would be payable on such petition or each such individual petitioner has to pay court-fees separately?
4. In case answer to question No. 1 is in the negative, whether the defect of misjoinder of several petitioners in the writ petition can be cured by requiring each such petitioner to pay separate court-fees?

5. Whether the petition is maintainable for questioning similar actions taken by different Mandi Samitis independently of each other in cases where the aggrieved party seeks relief against each such committee on identical grounds?

2. These questions arise out of writ petitions filed by a large number of persons jointly. For instance, in Writ Petition No. 13367 of 1981 36 partnership firms have filed a single writ petition. Each such firm carries on business independently and under a licence granted to it separately by the Mandi Samiti.

3. In Writ Petition No. 6886 of 1980 there are 22 petitioners. Petitioners 1 to 21 are traders who carry on business of commission agent in finished tobacco. Petitioner No. 2 is a registered association of which petitioners Nos. 1 to 21 are members.

4. In each writ petition the petitioners claim that the Mandi Samiti is not entitled to charge market fee. They pray that the Mandi Samiti be directed not to demand payment of market fee. In some cases they have prayed for quashing of the notices issued by the Mandi Samiti for filing returns and paying the market fee.

5. In each writ petition the ground of attack is common to all various petitioners. For instance, in Writ Petition No. 6886 of 1980 all the 22 petitioners claim that tobacco is not a specified agricultural produce. The Mandi Samiti is hence not entitled to charge any market fee in respect of transactions of manufactured tobacco. In Writ Petition No. 133/67 of 1981 all the 36 petitioners state that since the Mandi Samiti does not render any service, it is not entitled to charge market fee from the traders.

6. At the hearing of the writ petitions the respondents raised a preliminary objection. It was submitted that an association of traders had no locus standi to file a writ petition on behalf of the traders when no right of the association as such was being adversely affected by the impugned action of the Mandi Samiti. It was also urged that the various traders have an independent cause of action in respect of their liability to pay market fee. They cannot validly join in a single writ petition. In any event they must pay separate sets of court-fees.

7. It has also urged that in some cases several Mandi Samitis have been made defendants. They may have different defences. This will lead to confusion and multifariousness. Such a writ petition is not maintainable.

8. The Division Bench felt that the questions raised by these preliminary objections should more properly engage the attention of a larger Bench. Accordingly the Bench has referred the abovesaid questions of law for decision by a larger Bench, That is how the matter has come before this Full Bench.

9. We shall deal with the questions seriatim. Question No. 1 : "Whether an association of persons, registered or unregistered can maintain a petition under Article 226 of the Constitution for the enforcement of the rights of its members at distinguished, from the enforcement of its own rights?"

10. Article 226 of the Constitution confers very wide power on the High Courts for enforcement of rights. It is implicit that the relief asked for must be one to enforce a legal right.

11. In *The State of Orissa Vs. Madan Gopal Rungta*, it was held that the existence of the right is the foundation of the exercise of jurisdiction under Article 226 of the Constitution.

12. *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, decided that the legal right that can be enforced under Article 32 must ordinarily be the right of the petitioner himself who complains of infraction of such right. *The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal and Others*, , holds that the same principle applies to a petition under Article 226. The Supreme Court reiterated these principles in *Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others*, .

13. In *Rustom Cavasjee Cooper Vs. Union of India (UOI)*, the Supreme Court held that a shareholder, a depositor or a director of a company registered under the Companies Act may not be entitled to move a petition for infringement of the right of the Company unless by the action impugned by him his rights are also infringed. In other words, the petitioner may seek relief in respect of his own rights and not of others.

14. In *Indian Sugar Mills Association Vs. Secy. to Government, Uttar Pradesh Labour Department and Others*, a Full Bench of our Court held that a registered trade union is a distinct and separate person from the various members and it may not sue on behalf of its members if its own interests are not affected unless by the rules and regulations of an association provision has been made giving to the association the right to represent the members in any legal proceedings before the Court. The reason being that without any such express authorisation it cannot be held that the association had a right to move the court on behalf of its members because any order passed in these proceedings will not bind the mills.

15. In *Fertilizer Corporation's case* AIR 1981 SC 344 Chandrachud, C.J. speaking for the majority ruled that the question whether a person has the locus to file a proceeding depends mostly and often on whether he possesses a legal right and that right is violated. But, in an appropriate case, it may become necessary in the changing awareness of legal rights and social obligations to take a broader view of the question of locus to initiate a proceeding, be it under Article 226 or under Article 32 of the Constitution. (Para 23)

16. Krishna Iyer, J. dealt with the question of access to justice elaborately. In paragraph 44, He observed :

"Public interest litigation is part of the process of participative justice and "standing" in civil litigation of that pattern must have liberal reception at the judicial door-steps."

The concept of locus standi in public interest litigation was further explained by

his Lordship in paragraph 48 where he observed:

"If a citizen is no more than a wayfarer or officious intervener without any interest or concern beyond what belongs to any one of the 660 million people of this country, the door of the court will not be ajar for him. But if he belongs to an organisation which has special interest in the subject matter, if he has some concern deeper than that of a busybody, he cannot be told off at the gates, although whether the issue raised by him is justiciable may still remain to be considered. I, therefore, take the view that the present petition would clearly have been permissible under Article 226."

See judgments of Krishna Iyer J. in *Bar Council of Maharashtra Vs. M.V. Dabholkar and Others*, 17. The question of "standing" was the subject of a passing observation by Krishna Iyer, J. in *Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others*, (to which the other two learned Judges constituting the Bench did not advert to). His Lordship observed (para 63):--

"A technical point is taken in the counter-affidavit that the 1st petitioner is an unrecognised association and that, therefore, the petition to that extent, is not sustainable. It has to be overruled. Whether the petitioners belong to a recognised union or not, the fact remains that a large body of persons with a common grievance exists and they have approached this Court under Article 32. Our current processual jurisprudence is not of individualistic Anglo-Indian mould. It is broad-based and people-oriented and envisions access to justice through "class actions", "public interest litigation", and "representative proceedings". Indeed, little Indians in large numbers seeking remedies in courts through collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concept of "cause of action" and "person aggrieved" and individual litigation is becoming obsolescent in some jurisdictions. It must fairly be stated that the learned Attorney General has taken no objection to a non-recognized association maintaining the writ petitions."

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.

17A. Another exception to the traditional rule of locus standi was discussed in *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*,

"Where judicial redress is sought of a legal injury or legal wrong suffered by a person or class of persons who by reason of poverty, disability or socially or economically disadvantaged position are unable to approach the court and the court is moved for this pro-posal by a member of a public by addressing a letter drawing the attention of the Court to such legal injury or legal wrong, Court would cast aside all mechanical rules of procedure and entertain the letter as a writ petition on the judicial fide and take action upon it."

18. It appears that the little Indian mentioned by Krishna Iyer, J. is this person, that is, who by reason of poverty, disability or socially or economically disadvantaged position is un-able to approach the Court. The legal injury or wrong suffered by such a person can be brought to the notice of the Court by any other person, be it an association of such persons or a member of the public.

19. The question of locus standi was elaborately dealt with in the Judges case S.P. Gupta Vs. President of India and Others, . The law laid down by the majority decision in that case was affirmed in D.S. Nakara and Others Vs. Union of India (UOI), . There it was observed (at Pp. 149-50)--

"The majority decision of this Court in S.P. Gupta Vs. President of India and Others, rules that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and the observance of such constitutional or legal provision."

Accordingly a public interest litigation can be initiated for judicial redress for public injury by a person not personally hurt. This principle will not apply where an association or organisation seeks to enforce a personal or private right of another, as distinguished from public injury.

20. To summarise, 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 at 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 way-farer or a busybody i.e. it has a special interest in the subject-matter.

(3) Where the rules or regulations of the association specifically authorise 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.

21. In other cases an association whether registered or unregistered cannot

maintain a petition under Article 226 for the enforcement or protection of the rights of its members, as distinguished from the enforcement of its own rights.

22. This is our answer to question No. 1. Question No. 2: Whether a single writ petition under Article 226 of the Constitution is maintainable on behalf of more than one petitioner not connected with each other as partners or those who have no other legal subsisting jural relationship where the questions of law and facts involved in the petitions are common?

23. It will be seen that this question raises the issue of maintainability on ground of joinder or misjoinder of petitioners. Question No. 1, on the other hand, raised the point about locus standi or standing. The concept of locus standi is different and distinct from the question of joinder of parties. The former relates to the right of a person to approach the Court; the latter to join with others in approaching the Court. One may not be confused with the other.

24. The question of joinder came up for consideration before a Full Bench of this Court in Mall Singh's case 1968 ALT 210. The Full Bench decided that an application under Article 226 of the Constitution is a proceeding in a court of civil jurisdiction, Section 141 of the CPC was attracted. The provisions of the CPC apply to proceedings under Article 226 in so far as the provisions of the Code can be made applicable. The majority view was:

"The joinder of more than one person under Article 226 can be permitted only where the right to relief arises from the same act or transaction and there is a common question of law or fact or where though the right of claim does not arise from the same act or transaction the petitioners are jointly interested in the cause or causes of action."

This view was based on a combined reading of Order 1, Rule 2, and Order 2, Rule 3 C. P. C. The CPC (Amendment) Act, 104 of 1976 added an Explanation to Section 141, stating that in this section the expression "proceedings" includes proceedings under Order 9, but does not include any proceeding under Article 226 of the Constitution. The result is that now the provisions of the CPC are not, of their own force, applicable to writ petitions.

25. The question came up for consideration before the Supreme Court in Mota Singh and Others Vs. State of Haryana and Others, . In that case several truck operators filed a single writ petition challenging the liability of each one of them to pay tax. The Court observed (at p. 485)--

"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. A firm as understood under the Partnership Act or a Company as understood under the Indian Companies Act, if it is entitled in a law to commence action either in the firm name or in the Company's name can do so by filing a petition for the benefit of the Company or the partnership and in such a case court-fee would be payable depending upon

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

26. The relevant part of the observations relating to joinder of parties is--

"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

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"

27. It was further held:

"It would be a travesty of law if one were to hold that as each one uses highway, he has common cause of action with the rest of truck pliers"".

28. It appears to us that according to this decision a joint writ petition would be validly maintainable if there is legally subsisting jural relationship of association of persons between them or if they have the same cause of action. In substance, this decision applies the same principle of procedure as was enunciated by the Full Bench of our Court in Mall Singh's case 1968 ALT 210, namely, generally joinder of more than one person can be permitted in a proceeding under Article 226 where the right to relief arises out of the same act or transaction or where the petitioners are jointly interested in the cause of action and a common question of law or fact arises. In other words, joinder of more than one person is permissible when the cause of action is the same. Such joinder may not be permissible if the cause of action is similar.

29. Our attention was invited, to a Division Bench decision of this Court in Manzoor Ahmad Khan v. State of U. P. (Civil Misc. Writ Petition No. 1254 of 1981). In that case it was held that the petitioners had separate causes of action and so they were liable to pay separate court-fee. To that extent the decision is correct.

30. Learned counsel for the petitioners submitted that Mota Singh and Others Vs. State of Haryana and Others, was not applicable because it related to petitions under Article 32 of the Constitution.

31. In The Calcutta Gas Company (Proprietary) Ltd. Vs. The State of West Bengal

and Others, the Supreme Court held that the same procedure applied to a petition under Article 226 as they applied, to a petition under Article 32.

32. Similarly, in Fertilizer Corporation's case AIR 1981 SC 344 the Supreme Court reiterated that the same principle governs the question of locus standi. be it a proceeding under Article 226 or under Article 32 of the Constitution. In our opinion on the question of joinder of parties or causes of action the same principle would govern proceedings under Article 32 as well as Article 226. The decision in Mota Singh and Others Vs. State of Haryana and Others, will be equally applicable to a proceeding under Article 226.

33. Learned counsel for the petitioners relied upon the observations of Krishna Iyer, J. in Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the Association Vs. Union of India (UOI) and Others, . Those observations related to locus standi. They had no bearing on the question of joinder of petitioners. The passing observation of Krishna Iyer, J. (to which the other two learned Judges constituting the Bench did not advert to) related to to technical point taken in the counter-affidavit (though not argued at the hearing) that the "first petitioner is a non-recognised association and that therefore, the petition to that extent is not sustainable". This objection related to locus standi of the first petitioner. It had nothing to do with the question whether more than one person can validly join in a single writ petition.

34. Our answer to the second question is that a single writ petition under Article 226 of the Constitution by more than one petitioner, not connected with each other as partners or any other legally subsisting jural relationship, is maintainable where the right to relief arises from the same act or transaction; and there is a common question of law or fact or where though the right of claim does not arise from the same act or transaction, the petitioners are jointly interested in the cause or causes of action.

35. The third and the fourth questions are--

(3) In case the answer to question No. 1 is in the affirmative, whether only one set of court-fees would be payable on such petition or each such individual petitioner has to pay court-fees separately?

(4) In case answer to question No. 1 is in the negative, whether the defect of misjoinder of several petitioners in the writ petition can be cured by requiring each such petitioner to pay separate court-fees?

36. Where a single writ petition by an association or by more than one person is maintainable as mentioned above, only one set of court-fees would be payable. The levy of court-fee will not depend on the number of persons who have joined in the writ petition. But, where a single writ petition is not validly maintainable, but nonetheless several persons join in it, then the principle laid down in Mota Singh and Others Vs. State of Haryana and Others, will apply; namely, each petitioner will have to pay court-fee separately as if he had filed a separate writ

petition. In such cases the writ petition may not, in the discretion of the Court, be dismissed outright. The defect of misjoinder of petitioners can be cured by requiring each petitioner to pay separate court-fees.

37. Our answer to the third question is that where a single writ petition by an association or by more than one person is maintainable, then a single set of court-fees would be payable. Else, each petitioner is liable to pay separate court-fees.

38. Our answer to the fourth question is that the technical defect of mis-joinder of petitioners can, in the discretion of the Court, be cured, by each petitioner paying separate court-fees.

39. In the present group of writ petitions the position is that the petitioners are businessmen carrying on business in foodgrains etc. under licences granted to each one of them separately. They are, in effect, seeking enforcement of their individual rights. Their grievance is against the levy of market fee on each of them by the Mandi Samiti. The Mandi Samiti has issued notices to individual traders who are the petitioners requiring them to file returns as provided in the Rules and to pay market fee. They want the quashing of these notices issued to individual petitioners. In some of the writ petitions a direction has been sought that the Mandi Samiti is not entitled to levy market fee.

40. It is true that the principal question raised in these petitions is the same, but nonetheless each petitioner has an Independent cause of action because each petitioner has been made liable to pay market fee. The cause of action is not joint. Under these circumstances the petitioners cannot validly maintain a joint writ petition.

41. The petitioners may not, however, be dismissed on this ground, provided the petitioners pay separate court-fee for each one of them.

42. Question No. 5: "Whether one petition is maintainable for questioning similar actions taken by different Mandi Samitis independently of each other in cases where the aggrieved party seeks relief against each such Committee on identical grounds?"

43. This question arises in writ petition No. 6886 of 1980. In that case the petitioners deal in manufactured tobacco. Their case is that tobacco is manufactured in various parts of the country outside the jurisdiction of Mandi Samiti, Kanpur, within whose jurisdiction they carry on trade. They import such tobacco in Kanpur or take it out of Kanpur, and this tobacco has to pass the territories of various other Mandi Samitis on the way. These other Samitis have fixed barriers on the road like octroi barrier of Municipal Boards, and they require the petitioners to pay market fees on the tobacco as soon as it enters within their respective jurisdictions. Such Committees have been arrayed as respondents 3 to 7 in the writ petition. The petitioners' case is that the demand of market fees by these several Mandi Samitis on the basis of entry of the tobacco within their

respective territories is absolutely unauthorised. Their prayer is that these Mandi Samitis be restrained from demanding market fees from the petitioners on manufactured tobacco.

44. In view of the averments made in the writ petition there appears to be no legal obstacle to the impleadment of these various Mandi Samitis. If, of course, these Mandi Samitis raise different defences and the Court finds that it is not convenient or proper to adjudicate upon the cases of the various defendant in the same writ petition, it may order the petitioners to file separate writ petitions against each Mandi Samiti.

45. Our answer to the referred questions is as follows:--

Q. 1 ? Whether an association of persons, registered or unregistered, can maintain a petition under Article 226 of the Constitution for the enforcement of the rights of its members as distinguished from the enforcement of its own rights?

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 (Title 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 authorise 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 the enforcement or protection of the rights of its members, as distinguished from the enforcement at its own rights.

Q. 2 Whether a single writ petition under Article 226 of the Constitution is maintainable on behalf of more than one petitioner, not connected with each other as partners of those who have no other legally subsisting jural relationship where the questions of law and fact, involved in the petition, are common?

A. 2 A single writ petition under Art 226 of the Constitution by more than one petitioner, not connected with each other as partners or any other legally subsisting jural relationship, is maintainable where the right to relief arises from the same act or transaction and there is a common question of law or fact or where though the right of claim does not arise from the same act or transaction the petitioners are jointly interested in the cause or causes of action.

Q. 3 In case the answer to question No. 1 is in the affirmative, whether only one set of court-fees would be payable on such petition or each such individual petitioner has to pay court-fees separately?

A. 3 Where a single writ petition by by an association or by more than one person is maintainable, then a single set of court-fees would be payable; Else, each petitioner is liable to pay separate court-fees.

Q. 4 In case answer to question No. 1 is in the negative, whether the defect of misjoinder of several petitioners in the writ petition can be cured by requiring each such petitioner to pay separate court-fees?

A. 4 The technical defect of mis-joinder of petitioners can, in the discretion of the Court, be cured by each petitioner paying separate court-fees.

Q. 5 Whether the petition is maintainable for questioning similar actions taken by different Mandi Samitis Independently 0* each other in cases where the aggrieved party seeks relief against each such Committee on identical grounds?

A. 5 Our answer to this question is in the affirmative.

46. Let the papers be laid before the concerned Bench with this opinion and answers