

ANDHRA PRADESH HIGH COURT

Annam Adinarayana

Vs.

State of A.P

S.R. No. 31927 of 1956

(Subba Rao, C.J. and Srinivasachari, J.)

21.06.1957

JUDGMENT

Subba Rao, C.J

1. The question in this reference is whether the two petitioners who were discharged from service by a single order could file one petition under Article 226 of the Constitution of India.
2. The two petitioners were supervisors of the Market Committee, Guntur. The Government of Andhra, by their order bearing No. 87298/N/56/2 dated 11-10-1956, gave instructions to the Collector, who is the ex-officio Chairman of the Guntur Market Committee, to disband the additional staff immediately. Pursuant to the said instructions, the Guntur Market Committee discharged the two petitioners from service by order bearing R. C. No. 1280/ 56 A2 dated 26-10-1956. Thereafter, both the petitioners jointly filed a single petition under Article 226 of the Constitution of India for quashing the order terminating their services. On the answer to the question whether the petitioners could file one petition in the aforesaid circumstances depends the question of court-fee for, if one petition is not maintainable, they will have to file separate petitions involving the payment of separate court-fee.
3. Learned Counsel for the petitioners contends that the provisions of the Civil Procedure Code apply to a petition under Article 226 of the Constitution and that as they are questioning the validity of a single order, they could file one application under Order 1 Rule 1 C. P. C. The Government Pleader argues that a proceeding under Article 226 of the Constitution of India is not a civil proceeding and the provisions of the Civil Procedure Code cannot be invoked and therefore, the petitioners should follow the practice obtaining in England where-from the jurisdiction to issue such writs is borrowed and under the procedure, in similar circumstances a common petition is not maintainable.
4. The first question is whether proceedings under Article 226 of the Constitution of India are civil proceedings within the meaning of the Civil Procedure Code. Article 226 of the Constitution of India says :-

"Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction to issue to any person or authority including in appropriate cases any Government within whose territories directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them for the enforcement of any of the rights conferred by Part III and for any other purpose."

Dealing with the scope of this article, a Division Bench of the Madras High Court of which one of us was a member in *Ponnuaswami v. Returning Officer Namakkal*¹, observed at page 782 thus :

"Art. 226 confers on every High Court an extensive power to issue writs or other directions in respect of courts throughout the territories in relation to which it exercises jurisdiction for enforcing fundamental rights and for any other purpose. The only limitation is that the power is limited only to the territories over which the High Court had jurisdiction, that is, it can exercise that power within its territorial jurisdiction. It is deliberately intended to keep tribunals within their bounds and to reach injustice wherever it is found.

Before the Constitution, the High Courts of Calcutta, Bombay and Madras were issuing prerogative writs subject to the limitations created by statutes. The other High Courts had no such power. Even the said three High Courts were not able to reach the tribunals beyond the original jurisdiction of the High Court. They were not authorized to enforce fundamental rights. The content, of the power now conferred under Article 226 is different and more extensive than the limited power exercised before.

This extraordinary jurisdiction, which I may, for convenience call power to issue constitutional writs is not dealt with by Article 225. It cannot be treated as part of the jurisdiction of the law administered in any existing High Court, for if so held, it may mean that in the case of Courts, which had no power to issue a writ previously, fresh power had been given and in the case of courts which had some power previously it was an extension of that power.

It is therefore a new power conferred on the High Courts to be exercised subject to the territorial jurisdiction. It is not a power which is an appenage only to the subject matter dealt with under Article 225. That the High Court has territorial jurisdiction over the entire State within which it is situated is also clear from the provisions of Article 227."

These observations, on which some reliance was placed by the learned Government Pleader do not say anything more than recognising the extraordinary jurisdiction of the High Court to issue writs under Article 226 of the Constitution of India. The Division Bench did not purport to lay down, nor was any such argument advanced, that a proceeding under Article 226 of the Constitution was not a civil proceeding. That question directly arose before another Division Bench of the Madras High Court in *Ryots of Garabandho v. Zamindar of Parlakimedi* The learned Judges Sir Lionel Leach C.J. and Madhavan Nair J. held that an order refusing the issue of a writ of certiorari to quash the orders of the Board of Revenue was one passed in the exercise of its

¹1952-1 Mad LJ 775 (at p. 776)

² ILR 1938 Mad. 816

original civil jurisdiction within the meaning of Section 109 C.

P. C. and was subject to the right of appeal to the Privy Council from the same.

That judgment was followed by another Division Bench of the same High Court in *Chenchanna v. P. S. Transport Ltd.*³, wherein Govinda Menon and Chandra Reddi JJ. held by the same parity of reasoning that an order made under Article 226 of the Constitution of India can be reviewed under Order 47 Rule 1 C. P. C. These two decisions being those of Division Benches of the Madras High Court delivered before 5-7-1954 are binding on us.

5. The Learned Government pleader contends that the said two judgments laid down incorrect law and in support of his contention, relies upon a recent Full Bench decision of the Patna High Court in Collector of *Monghyr v. Pratap Singh*⁴, There, the Full Bench held that the proceeding in the High Court for grant of a writ under Article 226 of the Constitution is not a civil proceeding within the meaning of Article 133 of the Constitution and that the petitioner against whom a writ has been issued has no right of appeal to the Supreme Court under that Article. We have gone through the judgment carefully. There is much to be said for the view expressed by the learned Judges. But, we do not think a sufficiently strong case has been made out to refer the question to a Full Bench as not only the aforesaid two Bench decisions but the Madras High Court since the Constitution came into force and the Andhra High Court after its formation accepted the view expressed in the aforesaid two Bench decisions in innumerable unreported decisions. We, therefore, hold that a proceeding under Article 226 of the Constitution of India is a proceeding in a Court of civil jurisdiction. If, so, section 141 C. P. C. is directly attracted. It reads :

"The procedure provided in this Code in regard to suits shall be followed, as far as it can be made applicable, in all proceedings in any court of civil jurisdiction."

By reason of this section, the provisions of Order 1 apply to a writ proceeding as far as they can be made applicable to such a proceeding. The relevant rules applicable to the joinder of more than one plaintiff in one suit are Order 1 Rule 1 and O. 2 Rule 3. They read thus - Order 1 Rule 1 : "All persons may be joined in one suit as plaintiffs in whom any right to relief in respect of or arising out of the same act or transaction or series of acts or transaction or series of acts or transactions is alleged to exist, whether jointly, severally or in the alternative where if such persons brought separate suits, any common question of law or fact would arise." Order 2 Rule 3 : - "Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly; and any plaintiffs having causes of action in which they are jointly interested against the same defendant or the same defendants jointly may unite such a cause of action in the same suit."

A combined reading of these rules may be stated thus :

³ ILR 1952 Mad 1000

⁴ AIR 1957 Pat 102

"The result is that where there are two or more plaintiffs and two or more causes of action, they may be joined in one suit if the right to the relief and the causes of action

arise from the same act or transaction and that there is a common question of law or fact though they may not all be jointly interested in all the causes of action.

But if the right to the relief claimed does not arise from the same act or transaction or if there is no common question of law or fact, the plaintiffs cannot all join in one suit unless they are jointly interested in the causes of action as provided by this rule."

(C. P. C. by Sir D. F. Mulla, 12th Edition, page 54).

We accept the aforesaid summary as laying down the correct law on the interpretation of the aforesaid provisions. The test laid down by the aforesaid observations furnishes a reasonable guide to decide the question raised before us.

6. Kumarayya J. in *In re A Gopala Krishnarao*⁵, considered a similar question. The petitioners before the learned Judge were individual owners of 10 rice mills in Krishna District. Each one of the petitioners applied to the Collector for renewal of his licence. The collector made separate orders in each one of their applications demanding a higher rate on the ground that the mill of every petitioner was equipped with a sheller or a sheller grinding stone. The petitioners filed a joint petition for a writ of mandamus or any other order or direction questioning the legality of the orders passed on their respective petitions. Kumarayya J. in a considered judgment quoted the following pages from Halsbury's Laws of England, Vol. IX (Hailsham Edition) page 783, para 1325 :

"Two or more persons cannot join in a single petition 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 claims arise." and then proceeded to state :

"This rule is warranted by the nature of the writ proceeding and is calculated to remove great inconvenience which might otherwise result in issuing several writs, orders or directions in the nature of writ on a single omnis petition relating to rights of several persons affected by distinct or separate orders. The right of a person to apply for an appropriate writ flows from the order that affects him. A person desirous of questioning the validity or legality of such order is entitled, subject to other conditions, to apply for such writ. It is not open to him to join in this petition, other persons or persons affected by similar orders, for they too have a remedy open to them and the quashing of one order does not necessarily render the other order null and void.

The case however may be different where a common or class injury is done by some common order or orders. Even in cases where joint application is thus permissible, the principle laid down in American jurisprudence Vol. 35, page 81, paragraph 33 is that if it is found that even one of the applicants is disentitled to relief the whole application must fail. This only illustrates that the filing of a separate and independent petition is a rule which knows of few

⁵ S. R. No. 28757 of 1956 : AIR 1957 And Pra 88

exceptions and the principles embodied in Order 1 C. P. C. cannot be extended to writ

petitions."

While we accept the principles laid down by the learned Judge, we think the same principles could be worked out within the framework of the relevant provisions of the Civil Procedure Code. In that case, there were separate orders of the Collector inflicting distinct injuries on the petitioners and therefore, the right to relief and the causes of action of the petitioners did not arise from the same transaction nor were they jointly interested in the causes of action.

7. Rajagopala Ayyengar J. in *Muhammad Ibrahim v. Deputy Commercial Tax Officer, Pudukottai*⁶, held that the fact that similar orders were passed in the case of other individuals also by the same authority or officer does not mean that the injury caused is a common or class injury so as to justify a single petition with all the individuals similarly affected joining in it as petitioners. There, 11 tobacco merchants filed an application for the issue of a writ of mandamus to restrain the Deputy Commercial Tax Officer, Pudukottai, from taking any action against the petitioners in pursuance of Madras Act XIII of 1935. Petitioners 1 to 7 are the residents of Pudukottai while petitioners 8 and 9 belong to Kumbakonam and petitioners 10 and 11 to Tanjore cusba. The Deputy Commercial Tax Officers of the three places were impleaded as respondents. The petitioners were admittedly carrying on their trade individually at three different places. Each of the three groups of petitioners was seeking a writ of mandamus against each of the three respondents having jurisdiction over different areas. On these facts, Rajagopala Ayyangar J. observed :

"Where a petitioner desires to question the validity or legality of an order, he is entitled to apply for an appropriate writ but this right of his flows from the order affecting him. The fact that similar orders are passed in the case of other individuals also be it by the same officer or authority does not mean that the injury caused is a common or class injury so as to justify a single petition with all the individuals similarly affected joining in it as petitioners. The provision in Order 1 Rule 8 Civil Procedure Code, seeks to obviate the inconveniences arising out of a multiplicity of parties but neither the rule nor its principle can be extended to writ petitions.

Again the fact that the relief prayed for by the several petitioners each of whose individuals right is alleged to have been invaded improperly by the impugned order is grounded on a common objection, the invalidity of the legislation or the rule or some order interpreting or enforcing the statute or the rule does not also afford and basis for a joint writ petitions by several petitioners aggrieved by similar orders. Each of them has to file independent petitions, paying separate Court-fee on each, with separate vakalat etc. In these cases, I have directed the petitioners to amend the petitions so as to retain only one petitioner on the record and as this has been done I have admitted the writ petitions."

This judgment is authority for the position that the provisions of Order 1 Rule 8 C. P. C. cannot be applied to a writ petition. It is not necessary to express our opinion in this case but the conclusion may be justified on the ground that the said procedure is inappropriate to writ petitions. There is no scope for

invoking order 1 rule 1 or order 2 rule 3 C. P. C. as in that case the right to relief of the various petitioners did not arise from the same acts or transactions or the petitioners were not jointly interested in the cause of action.

8. In *United Motors (India) Ltd. v. State of Bombay*⁷, a Division Bench of the Bombay High Court considered the maintainability of one application under Article 226 of the Constitution of India by different persons. There, the petitioners six of whom were corporations and the seventh a firm, carried on the business of buying and selling motor Cars on a large scale. They filed one petition under Article 226 of the Constitution of India challenging the Bombay Sales Tax Act 1952, on the ground that the Legislature was not competent to enact it as it contravened Articles 14 and 19 of the Constitution. Chagla C.J. after quoting the following passage from Halsbury's laws of England Vol. IX page 783 paragraph 1325 :

"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." proceeded to state :

"The position in this petition is entirely different. The claim made by all the petitioners is the same viz., that the Sales Tax Act is invalid and it should not be enforced against them. Here there are not several claims made by several petitioners. Even assuming that the Advocate General was right, at the highest the joining of more than one petitioners would be a surplusage and that surplusage could be cured by six of the petitioners being struck off the record. The petition could be easily maintained by one out of the seven petitioners."

The aforesaid observations indicate that, if the claim made by all the petitioners is the same, one consolidated application is maintainable.

9. The Calcutta High Court in *Manindranath v. Baranagore Municipality*⁸, expressed the view that in a writ proceeding, the provisions of Order 1 C.P.C. could be followed. Though the observations are obiter, they are in accord with our view.

10. The legal position may now be summarised. An application under Article 226 of the Constitution of India is a proceeding in a court of civil jurisdiction. The provisions of Orders 1 and 2 can be invoked as far as they can be made applicable to the proceedings in a writ application under Article 226. Ordinarily, two or more persons cannot join in a single petition to enforce separate claims. But 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 to relief claimed does not arise from the same act or transaction, the petitioners are jointly interested in the causes of causes of action, one petition is maintainable at their instance. In the present case, the petitioners are aggrieved by a single act of the Collector and a common question of law and fact arises and, therefore, a single application is maintainable.

Order accordingly.

⁷1953-4 STC 10

⁸ AIR 1956 Cal 291