

RAJASTHAN HIGH COURT

Chandmal Naurat Mal

Vs.

State of Rajasthan

Civil Writ Petn. No. ** of 1966
(D.S. Dave, C.J. And Kan Singh, J)

05.09.1966

ORDER

D.S. Dave, J.

1. The case before us comes on an office report to the effect that a joint petition filed by 41 petitioners for restraining the respondents from enforcing the provisions of the Rajasthan Agricultural Produce Markets Act (Act No. 38 of 1961), 1961, the Rules made thereunder and the bye-laws made by the Krishi Upaj Mandi Samiti, Kishangarh, is not maintainable in view of Rule 375 of the Rajasthan High Court Rules, 1952, hereinafter to be referred as the "Rules", on the ground that the relief claimed by the petitioners cannot be said to be founded on the same cause of action. The office points out that while the petitioners may have similar or identical causes of action, they cannot be said to have the same cause of action within the meaning of the Rules.

2. The learned counsel for the petitioners contested the correctness of the office report and as, since the enactment of Rule 375 of the Rules by S.R.O. No. 6 of 9-10-64 a practice has grown up in this Court not to entertain such joint writ petitions, we invited a full dressed argument and have also given notice to the learned Government Advocate. Rule 375 occurs in Chapter XXII Part IV of the Rules is as follows :

"Rule 375(1) - An application for a direction under Article 226 of the Constitution other than a writ in the nature of Habeas Corpus shall be presented to the Registrar who shall direct that the application be laid before a Division Bench or a Judge sitting alone, as the case may be, according to the provisions of Rule 55 for orders.

- (2) The application shall state clearly the relief sought and the grounds upon which it is sought and be accompanied by an affidavit verifying the facts relied upon.
- (3) The application shall also state whether or not any similar application has been made to the Supreme Court.
- (4) An application by more than one person shall not be entertained except when the relief claimed is founded on the same cause of action."

Learned counsel for the petitioners contends that the relief claimed by the petitioners is founded on the same cause of action and, therefore, the joint petition is maintainable. According to him, the petitioners are carrying on their business in Kishangarh within the area of Krishi Upaj Mandi Samiti, Kishangarh, and they are affected by the enactment of the Rajasthan Agricultural Produce Markets Act, 1961, the Rules and bye-laws made thereunder which they are challenging. The writ petition, it is maintained, raises common questions of law and fact, as the petitioners' freedom to carry on trade and commerce will seriously be affected if they do not obtain licences as they are required to do.

3. Learned counsel for the petitioners has placed reliance on *Nathmal v. Commissioner Civil Supplies, Rajasthan*,¹ *Qurab Ali v. Govt. of Rajasthan*,² *Annam Adinarayana v. State of Andhra Pradesh*,³ and four decisions of the Allahabad High Court reported as *Bhumarg Yatayat v. Regional Transport Authority, Meerut*,⁴ *Durga Das Bhattacharya v. Municipal Board, Banaras*,⁵ *Abdul Qayum v. Keshav Saran*,⁶ and *Khem Karan v. State of Uttar Pradesh*,⁷

4. Learned counsel submits that the term 'cause of action' is a bundle of facts on the basis of which a relief is claimed, as observed by their Lordships of the Supreme Court in *Suraj Rattan Thirani v. Azamabad Tea Co Ltd.*⁸ and the learned counsel proceeds to submit that in the present case as the validity of a law is questioned and the relief is founded thereon, the petitioners can be said to have the same cause of action. Mr. M.L. Joshi, learned Deputy Government Advocate, on the other hand contests this stand and submits that what is affected by the impugned law, if at all, are the personal or individual rights of the several petitioners to carry on their trade or business and consequently it being infringement of individual rights the cause of action, that the petitioners claim, cannot be said to be joint or same so as to entitle them to maintain a joint writ petition. He has invited our attention to *Government*

*Press Employees' Association, Bangalore v. Government of Mysore,*⁹ *Mount Corporation v. Director of Industries and Commerce in Mysore, Bangalore,*¹⁰ *Management of Rain Bow Dyeing Factory Salem v. Industrial Tribunal,*¹¹ *Uma Shankar Rai v. Divisional Superintendent, Northern Railway, Lucknow,*¹² and *Ramchand Nihalchand Advani v. Anandlal Bapalal,*¹³

5. Before, we proceed to discuss the several cases cited at the bar, we may mention as to in what way the question has thus far been approached in this Court. By way of illustration we may reproduce our observations in a case *Ved Prakash v. State of Rajasthan, made on 21-12-64 (Raj).*¹⁴ This was shortly after Rule 375 was enacted in its present form. It was observed by us thus in our order dated 21-12-64 :

"The petitioners' learned counsel may be informed to let the Court know on whose behalf this application should be taken to be filed. It is not correct on his part to say that all the 20 petitioners have got the same cause of action. They may have similar cause of action, but it cannot be said to be the same cause of action. The remaining petitioners should, therefore, file separate applications, if they want any relief from this Court."

6. Pursuant to this order the High Court's office has adopted the uniform practice of not entertaining such joint writ petitions. The question thus arising for our consideration is whether R.375 has been correctly understood so far and whether in the present case the petitioners can be said to have the same cause of action within the meaning of this rule. In spite of this practice extending over almost two years we have not viewed the matter with any sense of infallibility on our part.

7. It has to be remembered that for dealing with applications under Article 226 of the Constitution, other than a writ in the nature of habeas corpus, elaborate procedure has been provided in Chapter XXII of the Rules. Rule 375 provides as to what the writ petition shall contain and before whom shall they be presented. Rule 376 provides for giving of a notice to the respondents. Rule 378 provides for conditions as to costs or giving of security before issue of notice. Rule 379 provides that applications shall be heard at least eight clear days after notice, unless the Court otherwise orders. Rule 380 provides that a person may be heard even though he had not been served with a notice, provided he appears to be a proper person to be heard. R.381 provides that application

under this Chapter shall be made through an Advocate and not by the party personally. Rule 382 provides that no second application on the same facts shall be maintainable. Rule 383 provides the procedure for determination of all questions arising in the case ordinarily upon affidavits. Rule 385 provides for communication of orders passed by the Court for compliance to such person or persons as may be necessary.

8. It has to be borne in mind, that Article 226 of the Constitution has conferred an extra-ordinary jurisdiction on the High Court and the mode of exercising the same is governed by the Rules that the Court has framed. The provisions contained in the Code of Civil Procedure will not be attracted to this Special jurisdiction in terms, because Section 4(1) of the Code of Civil Procedure provides that in the absence of any specific provision to the contrary nothing in this Code shall be deemed to limit or otherwise affect any special or local law now in force or any special jurisdiction or power conferred, or any special form of procedure prescribed, by or under any other law for the time being in force. We have considered necessary to notice these provisions because as will be clear during the discussion hereinafter, in some of the cases resort has been had to the provisions of Order 1 Rule 1 of the Code of Civil Procedure or Order 1 Rule 8 of the Code of Civil Procedure for seeing whether a joint petition is or is not maintainable. In our view, in the face of the specific provisions enacted in Chapter XXII of the Rules resort cannot be had to the provisions of Order 1 Rule 1 of the Code of Civil Procedure or Order 1 Rule 8 of the Code of Civil Procedure for that matter.

9. The problem, to our mind, in short is whether the petitioners can be said to have founded the relief in the writ petition on the same cause of action. It is true the petitioners are challenging the validity of the same law in the same manner and it may be assumed that they are affected in the same way. But all the same this is not sufficient for holding that they have the same rights which are allegedly infringed by this law. In other words, the injury with which they are threatened or have already suffered cannot be said to be the same. In *Charanjit Lal v. Union of India*, their Lordships of the Supreme Court had occasion to consider as to who was entitled to maintain a writ petition under Article 32 of the Constitution. To our mind, the considerations that prevailed with their Lordships about the availability of Article 32 to a writ petitioner apply with equal cogency to writ petitions under Article 226 of the Constitution before the High Court. The only difference, to our mind, is that whilst Article 32 can be invoked only for the enforcement of fundamental rights, Article 226

can be resorted to even for the enforcement of other legal rights. In that case the validity of a law was challenged by the writ petitioner and it was pointed out by their Lordships that a proceeding under Article 32 cannot really have any affinity to what is known as a declaratory suit (vide observations of Mukherjea, J. in para 45). In that case the petitioner sought relief of a declaration that the Act was invalid and the second relief was by way of injunction consequent upon the first. It was further observed by their Lordships that Article 32, as its provisions show, was not directly concerned with the determination of constitutional validity of particular legislative enactments (vide para 44). For invoking the jurisdiction of the Court it was incumbent on the petitioner to establish not only that the law complained of is bad, but that it affects or invades his fundamental right guaranteed by the Constitution of which he could seek enforcement by an appropriate writ or order. Their Lordships pointed out that the right that could be enforced under Article 32 must ordinarily be the right of petitioner himself who complains of infraction of such rights and approaches the Court for relief. After laying down these premises their Lordships proceeded to consider whether Charanjit Lal could be said to have suffered any infraction of his rights as a result of the impugned law and then as a result of the discussion they dismissed that writ petition.

10. In *State of Orissa v. Madan Gopal*,¹⁵ their Lordships of the Supreme Court had occasion to consider as to what a writ petitioner must establish before he is able to seek the interference of the High Court under Article 226 of the Constitution. After setting out Article 226 of the Constitution their Lordships observed as follows :-

"The language of the Article shows that the issuing of writs or directions by the Court is founded only on its decision that a right of the aggrieved party under Part III of the Constitution (Fundamental Rights) has been infringed. It can also issue writs or give similar directions for any other purpose. The concluding words of Article 226 have to be read in the context of what precedes the same. Therefore, the existence of the right is the foundation of the exercise of jurisdiction of the Court under this Article."

From this passage it will be evident that though the petitioners are all challenging the same law in the same way and they may even be affected in the same way, but it will be an over simplification to conclude therefrom that they have all the same cause of action." It has to be borne in mind that it is the infraction of one's individual right that

entitles a writ petitioner to maintain his writ petition and this element of infringement of one's individual right, to our mind, will stand in the way of a claim that the petitioners make about having the same cause of action. We may again make it clear that the petitioners will have a similar or identical cause of action and the matter may conveniently be argued together, but the specific point before us is whether they have the same cause of action within the meaning of Rule 376 and bearing in mind, considerations, governing the frame of writ petitions, we are unable to take a view different from the one that has hitherto been taken after 9-10-64 in this Court.

11. It has been laid down in Halsbury's Laws of England Vol. 2 (Vide para 155 page 83) that persons having a common and joint interest in the subject-matter in controversy may be joined as relators in mandamus, but persons having similar but wholly separate and distinct interests in the subject-matter of the controversy may not do so. This again prompts us to consider as to what is really the subject matter of the present writ petition, that is, whether it is merely for the declaring of the impugned law as unconstitutional or at the same time it is the upholding of the petitioners' right to carry on their business unhampered and for this to issue an adequate writ forbidding the respondents from interfering with the petitioners' rights and on going through the writ petition we are again confirmed in our belief that the rights of the petitioners' being different though identical, their causes of action are not the same. The petitioners have in their writ petition asked for the relief that the respondents be restrained from enforcing the provisions of the Act, the Rules and the bye-laws against them. In the said applications they asked for an ad-interim relief against the respondents that they be prohibited from prosecuting the several petitioners. Now, by no means can it be said that their prosecution will be in respect of the same offence. If at all, they will be committing different offences. Thus the injuries that the petitioners might suffer can only be said to be separate and not common.

12. We have gone through Rajasthan cases namely ILR (1951) 1 Raj 674 and ILR (1959) 9 Raj 1084 . They are of the period prior to the enactment of the Rule under consideration and in our view they cannot help us in interpreting the Rule 375 by which alone the practice of the Court in the matter of writ petitions has now to be governed.

13. In AIR 1958 Andhra Pradesh 16 the learned Judges observed that an application under Article 226 of the Constitution being a proceeding in a court of Civil

Jurisdiction, Section 141 of the Code of Civil Procedure was directly attracted and consequently the provisions of Orders 1 and 2 of the Code could be invoked so far as they could be made applicable to the proceeding on a writ petition. Having observed thus, the learned Judges laid down that 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 action, one petition is maintainable at their instance. It may be noted that the learned Judges had no occasion to consider the applicability of any rule analogous to Rule 375 of the Rules and their decision turned namely, on the applicability of Orders 1 and 2 of the Code of Civil Procedure. As we have already observed, when there is a specific provision in the Rules the provisions of the Code of Civil Procedure will not be applicable. Therefore, this case is clearly distinguishable and is of no help for interpreting the provisions of Rule 375 of the Rules.

14. What we have said about the Andhra case equally applies to the Allahabad cases. We may further notice that in the Allahabad High Court there has been a divergence of opinion. On this point Mr. Joshi has brought to our notice another Bench decision of the Allahabad High Court reported as AIR 1960 Allahabad 366. The learned Judges observed that in a case of a common right it is not open to the persons who are affected by a common order to file a joint writ petition. They have also added that 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 Code of Civil Procedure to such proceedings.

15. In AIR 1962 Gujarat 21 the learned Judges pointed out that rules of procedure in writ petitions would be governed by the special Rules relating to writ petitions framed by the High Court and not by Order 1 Rule 1 of the Code of Civil Procedure which has been superseded by the Special Rules. They also observed that there must be separate application by every applicant for every main right or claim sought to be enforced in a writ petition and accordingly two or more persons cannot join in a single application to enforce separate rights or claims by way of writs. The learned Judges dissented from the observations made in AIR 1958 Andhra Pradesh 16 on the ground that resort cannot be had to the provisions of O. 1 or O. 2 of the Code of Civil Procedure to proceedings in writ petitions in the presence of specific rules made by the High Court.

16. In AIR 1959 Madras 137, the learned Judges observed that provisions of order 1 of the Code of Civil Procedure could not be applied to writ proceedings on the strength of Section 141 of the Code of Civil Procedure . In that case the learned Judges had to consider the interest of 30 concerns which had joined in the writ petition which were found to be several and distinct though similar and, therefore, it was held that each one of them must file a separate writ petition, as a joint petition was incompetent. This judgment is marked by its thoroughness and all available English and Indian authorities are discussed therein.

17. The Mysore High Court has fallen in line with the Gujarat and Madras view in preference to the Andhra Pradesh and Allahabad view, vide AIR 1962 Mysore 25 and AIR 1965 Mysore 143. In the latter case it was observed that the jurisdiction vested in the High Court under Article 226 of the Constitution is a special original jurisdiction and in the very nature of the proceedings order 1 Rule 1 of the Code of Civil Procedure was not applicable to writ petitions.

18. Having considered the matter, we are not persuaded to change the view that we have been taking since Ved Prakash case, Civil Writ Petn. No. 1813 of 1964, D/-21-12-1964 (Raj) though at that time we did not give any detailed reasons as the question was not contested. We are, therefore, of the opinion that the petitioners are not entitled to maintain a joint petition and, we, therefore, allow two weeks' time to the learned counsel for the petitioners to let the office know as to on whose behalf he will continue the writ petition, so that the matter be proceeded further. It will be open to the several petitioners to file separate writ petitions, if they want to do so.

Order accordingly.

Cases Referred.

1. ILR (1951) 1 Raj 674
2. ILR (1959) 9 Raj 1084
3. AIR 1958 And Pra 16
4. AIR 1962 All145
5. AIR 1962 All 277
6. AIR 1964 All 386

7. AIR 1966 All 255
8. AIR 1965 SC 295
9. AIR 1962 Mys 25
10. AIR 1965 Mys143
11. AIR 1959 Mad 137
12. AIR 1960 All 366
13. AIR 1962 Guj 21
14. Civil Writ Petn. No. 1813 of 1964
15. AIR 1952 SC 12