

Nagendrappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Aug-02-1993

Reported in : ILR1993KAR2361; 1994(3)KarLJ320

Judge : Shivashankar Bhat, J.

Acts : Writ Proceedings Rules, 1977 - Rule 13

Appeal No. : W.P. No. 10105 of 1993

Appellant : Nagendrappa

Respondent : State of Karnataka

Advocate for Pet/Ap. : Dabali, Adv.

Judgement :

ORDER

Shivashankar Bhat, J.

1. Mr. Dabali, learned Counsel for the petitioner, submits that there is a circular against the issuance of licences afresh and therefore this Writ Petition shall be considered in the 'B' group itself.

2. The practice is to place a Writ Petition filed, for consideration of the Court as to whether it discloses a prima facie case; this is done at the preliminary hearing

stage. Rule 13 of the Writ Proceedings Rules 1977 governs the procedure. As per Clause (a), Court shall direct a rule nisi to the respondent calling upon him to show cause as to why the order sought should not be made, the concept of 'Rule Nisi' is embodied in the very clause, where it says that the respondent is called upon 'to show cause why the order sought should not be made'. A proviso is engrafted to this clause which says that where the Court 'deems fit', it may, before directing issue of rule nisi, direct notice to the respondent to show cause why Rule Nisi should not be issued. As per Clause (b), it may dismiss the petition if the Court is not satisfied that there are grounds to issue Rule Nisi. Rule 17 prescribe the Form of the notice. Rule 21, provides for the answer to be made by the respondent against the petition. This answer is to the Rule Nisi; normally this answer is to be made within 14 days of the time fixed for appearance; Rule also provide for the reply to the objections filed by the respondent.

3. Technically, filing of a 'statement of objections' by the respondent arises, only when a show cause notice is issued as to why Rule Nisi should not be issued under proviso to Rule 13(a).

4. These Rules represent the different stages involved in the matter of considering a Writ Petition. Normal rule is to issue 'Rule Nisi', if the petitioner make out a 'prima facie case' at the initial stage i.e., at the preliminary hearing. A Writ Petition cannot be just thrown out at the threshold, when, from the affidavit filed in support of the Writ Petition and the documents filed, petitioner is able to show that he is entitled to the relief sought for.

5. However, Writ Petition is a discretionary jurisdiction. There are several reasons -as to why this jurisdiction will be denied to a petitioner. Conduct of the petitioner, availability of an effective remedy, laches in approaching the Court, are some of the factors which may require the dismissal of the petition in limine. There may be cases where the Court may entertain doubt about the principle of law relied upon by the petitioner, in the sense, possibility of an existing binding precedent governing the fact situation. In all such matters and other similar circumstances, Court may deem fit to issue notice to the respondent to clarify the position; this may be done conveniently by issuing notice to the respondent asking him as to

why Rule Nisi should not be issued. There may also be cases which can be disposed off immediately if the respondent clarifies the position, either of law or fact; there are situations, where the impugned orders are to be set aside, on simple grounds like, the order being a non-speaking order; there are cases where Writs are issued to remind the respondent to perform his duty, like requirement to consider an application or representation filed by the petitioner before the respondent. All these cases do not involve prolonged arguments or investigation and in all probabilities, statement of objections by the respondent will not be necessary. I am of the view that the purpose of the proviso to Rule 13(a) to issue 'notice re: Rule' is to meet these situations.

6. However, cases wherein, the petitioner has raised arguable points, requiring pleadings on both sides, it is improper to confine them to the stage of 'notice re: Rule' alone, i.e., to confine them for disposal in 'preliminary hearing 'B' group'. The very fact, statement of objections in answer to the petition is required would show that the case is to be notified by issuing 'Rule Nisi' and should be listed for hearing. However, if a case requires expeditious disposal, Court may direct early listing of the case for disposal. Purpose of keeping the case in the preliminary hearing stage so that it can be considered for final disposal early, actually, is not realised because of the lengthy list of preliminary hearing cases; in fact, by confining the case to the preliminary hearing stage, (in 'B' group), technically, respondent is persuaded not to file any statement of objections. If so, it will be unfair to the respondent to consider the case of the petitioner, without an opportunity to the respondent to file his statement of objections.

7. The scope of the Writ jurisdiction cannot be expressed in better terms than in the words of the Supreme Court in *DWARKA NATH v. INCOME-TAX OFFICER SPECIAL CIRCLE, D WARD, KANPUR AND ANR.*, : [1965]57ITR349(SC) ; referring to Article 226 of the Constitution, the Court observed:

'This Article is couched in comprehensive phraseology and it ex facie confers a wide power on the High Courts to reach injustice wherever it is found. The Constitution designedly used a wide language in describing the nature of the power, the purpose for which and the person or authority against whom it can be

exercised. It can issue writs in the nature of prerogative writs as understood in England; but the scope of those writs also is widened by the use of the expression 'nature', for the said expression does not equate the writs that can be issued in India with those in England, but only draws an analogy from them. That apart, High Courts can also issue directions, orders or writs other than the prerogative writs. It enables the High Courts to mould the reliefs to meet the peculiar and complicated requirements of this Country. Any attempt to equate the scope of the power of the High Court under Article 226 of the Constitution with that of the England Courts to issue prerogative writs is to introduce the unnecessary procedural restrictions grown over the years in a comparatively small Country like England with a unitary form of Government to a vast Country like India functioning under a federal structure. Such a construction defeats the purpose of the Article itself. To say this is not to say that the High Courts can function arbitrarily under this Article. Some limitations are implicit in the Article and others may be evolved to direct the Article through defined channels'.

8. The nature of the questions raised by the petitioner, in many cases, look to be simple at the threshold, and one is tempted to decide the case early because one feels that the party could be granted the relief early; this temptation should not persuade one to confine the case to the preliminary hearing stage, because there are older cases pending in the Court, wherein, also, one or the other party may deserve the grant of an early relief. The process of hearing the recent cases early by confining them to the preliminary hearing 'B' group results in further delay in considering the older cases. This aspect cannot be lost sight of, while considering the request of the parties before the Court for early disposal, by retaining their cases in the said 'B' group.

9. For the reasons stated above, I am of the view that whenever a prima facie case is made out by the petitioner, normal rule is to issue Rule Nisi. Exceptional circumstances, under which, notice re: Rule to be issued are (1) doubt as to the locus standi of the petitioner; (ii) doubt as to the availability of an alternative remedy; (iii) need to consider the delay in approaching the Court; (iv) likelihood of some bar against considering the petitioner's case; (v) possibility of disposing off the case without a pleading or statement of objections on the part of the

respondent; (vi) cases involving judicial clarifications of a particular situation, without much contest between the parties, and (vii) such other similar matters, depending upon the circumstance of a case.

10. In the instant case, it is clear that the validity of the Circular requires to be considered. The Writ Petition cannot be thrown out at the threshold. It is an arguable question for both sides.

11. In the circumstances, I cannot agree with the learned Counsel that the Writ Petition should be heard in the 'B' group itself.

Issue Rule. Fix up the matter for hearing during the week commencing from August 23, 1993.

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