

In Re: Grain International and ors.

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Court : Andhra Pradesh

Decided On : Feb-20-1981

Reported in : AIR1981AP301

Judge : Madhava Reddy and ;Jaya Chandra Reddy, JJ.

Acts : [Constitution of India](#) - Articles 19(1), 32, 225, 226, 227 and 301; Andhra Pradesh Court-fees and Suits Valuation Act, 1956 - Sections 6, 6(3) and 6(4); [Code of Civil Procedure \(CPC\), 1908](#) - Sections 141 - Order 1, Rule 1, Order 2, Rule 6 - Order 9; Andhra Pradesh Rice Procurement (Levy) and Restriction on Sale Order, 1967 - Rule 4(1); Partnership Act; Indian Companies Act

Appeal No. : Writ Petition Nos. 693, 694, 697, 709, 717, 718, 736 and 766 of 1981

Appellant : In Re: Grain International and ors.

Advocate for Pet/Ap. : D. Sudhakara Rao, ;K.N. Jwala and ;L.P.R. Vithal, Advs.

Judgement :

Madhava Reddv, J.

1. Several traders, who are all registered dealers in rice and broken rice, have joined in filing a single writ petition seeking a writ, of prohibition or any other appropriate writ, direction or order to interdict the State of Andhra Pradesh, represented by its Secretary (Civil Supplies Department) the Commissioner of Civil

Supplies, Andhra Pradesh, the Commissioner of Commercial Taxes, Andhra Pradesh and the General Manager, South Central Railway, Secunderabad (respondent 1 to 4 respectively) from interfering with the free movement of rice and broken rice of the petitioners in their second and subsequent sales both either by rail or road, within the State and export to other States of the Country, declaring the action of the respondents in insisting on production of permits, as illegal and without jurisdiction, arbitrary and an abuse of authority violative of the rights of the petitioners under Article 19(1)(g) and Article 301 of the [Constitution of India](#).

2. Several such writ petitions in which varying number of traders have joined to file a single writ petition, are now before us. When these matters came up before our learned brother P. A. Choudary, J. for admission, having regards to the judgment of the Supreme Court in *Mota Singh v. State of Haryana*, : AIR 1981 SC484 , he was prima facie of the view that notwithstanding that the petitioners can join in filing one writ petition, separate court-fee has to be paid valued on the basis of the cause of action. It was argued for the petitioners before him, as it is now argued before us, that when a single writ petition is maintainable, only one set of Court-fee would be payable. As these questions would occur almost every day in the Court, it was thought proper to have an authoritative pronouncement by a Division Bench, only a few facts necessary to appreciate the contentions which necessitated the filing of these writ petitions may be noticed.

3. The question whether under; Clause 4 of the Andhra Pradesh Rice Procurement (Levy) and Restriction on Sale Order, 1967 the authorities concerned were entitled to insist upon permits for the second and sub-quent sales of levy free rice came up for con-sideration before a learned single Judge of this Court in several writ petitions W. P No. 3637/80 and batch which were disposed of by a common judgment dated 31-12-1980 (reported in (1981) 1 Andh LT 135). The learned Judge held as follows:--

'The result of the above discussion is: (i) the first sale of levy-free rice whether by a miller or dealer shall have to be under a permit issued under Clause 4 (1) of the 1967 order. It does not matter whether such rice is stocked in a rice mill, or elsewhere; (ii) the permit under Sub-clause (2) of Clause 4 which is distinct from

the permit under Sub-Clause (I) has to be obtained by a person transporting the rice for sale from the premises of a rice-mill. It does not matter whether the, person so transporting is a miller, or a dealer who has delivered the levy rice, or whether be is a purchaser of the rice, (iii) a miller or dealer who has delivered the levy rice, and who transports rice for sale without effecting a sale under a permit obtained under sub-clause (2) of Clause 4, has to obtain a permit under Sub-clause (1) whenever he intends to sell, or otherwise dispose of such stock; (iv) the permit under Sub-clause (1) is not required in the case of second or subsequent sales of levy-free rice; and (v) the authorities prescribed in Clauses 8 and 9 are entitled to call upon any dealer or other person concerned, to satisfy them that there has been no violation of the order. The authorities will of course have to act in accordance with the relevant clauses while taking action thereunder.

The writ petitions are disposed of with the above directions'.

A clarification was made at the instance of the petitioners in the following words.:

'I have already clarified the position in the last paragraph of my judgment according to which a miller or dealer has to obtain a permit from the appropriate authority for sale of levy free rice, i.e., of the remaining after delivering the appropriate levy. Such a permit is required irrespective of the fact whether the rice is stocked or stored in a rice mill or at any other place. I have also clarified that the permit under Sub-rule (2) of Rule 4 is required for transporting the rice from the premises of a rice mill, whether by the miller/dealer or by the purchaser. I had also stated that the authorities under the order are entitled to check and satisfy themselves at any time or at any itage that a person is not violating any of the provisions of the order. It a therefore, dear that if a dealer is found to be in possession of rice, or, is found to be transporting the rice andif the appropriate authority calls upon him to do so, it is his duty to satisfy the officer that his possession, or transport of the rice, is not in violation of any of the provisions of the Order which means, that he must prove that he is not a miller of dealer liable to deliver the levy rice and that he is a second or subsequent purchaser. This he can do by producing the copies of the permit or permits, as the case may be, issued under Rule 4 (1) of the Order or by other means open to him. On proof that he is a

second or subsequent purchaser of rice sold under permit under Rule 4 (1), he cannot be asked to or found fault with, for not delivering the levy rice. I must make it clear that the above clarification does not affect what I have stated to be the meaning and purport of Sub-rule (2) of Rule 4'.

It is now complained in these writ petitions that notwithstanding the fact that the writ petitions were allowed and the position was clarified, the respondents above named and their subordinates at the several check posts 'have started obstructing the movement of rice and broken rice even after the first sale by stopping lorries and other vehicles at various check posts set up by the Commercial Taxes Department and demanding the dealers transporting second sale rice and broken rice to produce permits for the transport. The respondent authorities have also instructed the railway authorities in charge of stations not to book any rice for transporting the same although the dealers explained to the officers at the check posts that no permits are required because the rice and broken rice under their transport are secondary sale rice etc., and neither the permits can be insisted nor they can be obtained and therefore cannot be produced.' It is alleged that in spite of this representation, the respondents are insisting upon the production of permits stopping the movement of rice and broken rice and threatening to seize the same and launch prosecution. Hence they seek a writ of 'prohibition'. It may be mentioned that in all the writ petitions except one, the petitioners have sought a writ of mandamus or other similar direction against the respondents.

4. Each of the petitioners is a registered dealer and some of them are rice millers themselves. On their own showing, they purchase rice and broken rice from millers and other dealers and sell them within the outside the State of Andhra Pradesh. It is their case that the rice millers as the first dealers would be paying levy to the Government and none of the petitioners engage themselves in such first sales. They all deal in second and subsequent sales of rice and broken rice.

5. In the affidavit filed in support of each of the writ petitions, it is pleaded that the law in respect of the liability of the second and subsequent seller to pay levy under the Andh. Pra. Rice Procurement (Levy) Restriction on Sale Order, 1967 has been declared by this Court and has been clarified at the instance of the dealers such

as the petitioners. Now it is their case that when they as the second and subsequent sellers, are not liable to pay levy or obtain a permit for transporting rice or broken rice, the respondents are interfering with the movement and insisting upon production of permits. It is not their case that all the petitioners, who joined in filing a single writ petition, were transporting rice and broken rice jointly and all or any of the respondents at any particular point stopped such movement. Now is it their case that all or any of them were simultaneously transporting levy free rice or broken rice and they were stopped by any particular respondent or a particular officer at any single check post Their case is that each one of them apprehends that if they transport rice and broken rice, they would be stopped at different check posts although the rice and broken rice which they are transporting is the subject of second or subsequent sale for which no permit is necessary and in respect of which no permit can be issued under the provisions of the 1967 order. In other words, what they apprehend is that the stock of each one of them is likely to be stopped by different check post officers at different places and at different times. It is this apprehension that has prompted these writ petitioners. Even if in one or two cases, there was such stoppage at different points by different persons on different dates, it is that action of that particular individual with respect to that particular petitioner that has necessitated the filing of the writ petition. The cause of action for these writ petitions is the act of that individual check post officer in relation to the stock being transported by a particular individual petitioner on a particular date that has given rise to the filing of the writ petition by him. Having regard to these facts, it has to be examined whether several such petitioners could join in filing the writ petition by paying a court-fee of Rs. 100/- or is each of the petitioners required to pay court fee of Rs. 100/- if they were permitted to join in filing one single writ petition.

6. The A.P. Court-fees and Suits Valuation Act, 1956 prescribes under Item 11 (s) of Schedule II a court-fee of Rs. 100/- payable on a 'petition to the High Court under Article 226 of the Constitution for a writ other than the writ of Habeas Corpus or a petition under Article 227 of the Constitution.' viewed simply, since a writ petition is filed and on a writ petition only Rs. 100/- is payable and Item 11 (s) of Schedule II of the Court-fees Act does not speak of the number of persons that may join in filing a single writ petition, a court-fee of Rs. 100/- only' would be

payable. But the matter is not so simple as that. The provisions of the Court-fees Act not only prescribe the amount of court-fee payable on a writ petition but also the total amount of court-fee payable when a petition is filed based on distinct and different causes of action. Section 6 of the Court-fees Act lays down as follows :--

'6. Multifarious Suits: (1) In any suit in which separate and distinct reliefs based on the same cause of action are sought, the plaint shall be chargeable with a fee on the aggregate value of the reliefs :

Provided that if a relief sought is only ancillary to the main relief, the plaint shall be chargeable only on the value of the main relief.

(2) Where more reliefs than one based on the same cause of action are sought in the alternative in any suit, the plaint shall be chargeable with the highest of the fees leviable on the reliefs.

(3) (a) Where a suit is based on two or more distinct and different causes of action and separate reliefs are sought in respect thereof, either alternatively or cumulatively, the plaint shall be chargeable with the aggregate amount of the fees that would be chargeable on the plaints under this Act if separate suits were instituted in respect of the several causes of action.

Provided that, where the causes of action in respect of reliefs claimed alternatively against the same person arise out of the same transaction, the plaint shall be chargeable only with the highest of the fees chargeable on them.

(b) Nothing in this sub-section shall be deemed to affect any power conferred upon a Court by Rule 6 of Order II in the First Schedule to the Code of Civil Procedure (Central Act V of 1908).

(4) The provisions of this section shall apply mutatis mutandis to memorandum of appeals, applications, petitions and written statements.'

The provisions of Section 6, though refer to suits, in view of sub-section (4) they apply mutatis mutandis to the writ petitions as well. Hence in determining the court-fee payable on a writ petition, what has to be considered is whether the cause of

action that has arisen for the several persons that have joined in filing a single writ petition is distinct and different and whether they could be allowed to join in filing a single writ petition or whether they must necessarily file separate writ petitions and further if they can be allowed to file a single writ petition, what is the court-fee payable having regard to the provisions of Section 6 of the Court-fees Act.

7. Rule 24 of the rules framed under Article 225 of the Constitution to regulate proceedings under Article 226 of the [Constitution of India](#), lays down that all other rules relating to cause and mailers coming before the original side and appellate side of the High Court and the provisions of the Code of Civil Procedure, 1908 will apply to the writ petitions and the writ appeals in so far as they are not inconsistent with the rules. There is no specific rule which lays down as to who all may or may not join in filing a single writ petition.

8. In this context the provisions of the Code of Civil Procedure also would have to be borne in mind. Section 141, C. P. C. declares that the procedure provided in the Code of Civil Procedure for 'suits' shall be followed as far as it can be made applicable to all proceedings in any Court of Civil Jurisdiction. The explanation to that section, however, excludes the application of the Code of Civil Procedure to proceedings under Article 226 of the Constitution in the following words:

'Explanation: In this section, the expression 'proceedings' includes proceedings under Order IX but does not include any proceeding under Article 226 of the Constitution.'

But by virtue of Rule 24 of the 'Rules to Regulate Proceedings under Article 226, the Code of Civil Procedure would be applicable mutatis mutandis to writ proceedings. In view of Rule 24, the provisions of Order 1, Rule 1, C. P. C. become immediately relevant.

9. Order I, Rule 1, C. P. C. lays down as to who may be joined as plaintiffs or parties. It reads:

'1. All persons may be joined in one suit as plaintiffs where-

(a) any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transaction Js alleged to exist in such persons, whether jointly, severally or in the alternative; and

(b) If such persons brought separate suits, any common question of law or fact would arise.'

This rule enables all persons to join in one petition if any right to relief in respect of, or arising out of, the same act or transaction or series of acts or transactions is alleged to exist in such persons whether jointly, severally or in the alternative and if such persons brought separate suits, any common question of law and fact would arise.

10. It has, therefore, to be seen whether the right to relief with respect to each of the petitioners arises out of the same act or series of acts and whether the right to relief exists jointly, severally or in the alternative and if such persons brought separate suits, any common questions of law or fact would arise. The position of law as to the requirement of a permit in respect of second and subsequent sales of rice or broken, rice has already been declared by this Court and the question of fact whether any of the respondents or their subordinates have insisted upon the production of a permit in respect of such sales would arise with respect to each of the individual petitioners separately and the facts relating to each of the petitioners would be different. The act of obstructing the movement of rice and broken rice and the act of insisting upon the production of a permit contrary to the declaration of law made by this Court would be by different individuals at different times and at different places. When that allegation is denied, question of fact peculiar to each individual petitioner would fall for determination by the Court. The acts of the respondents or their subordinates, which gave rise to the cause of action in each case of obstruction to the transport of rice or broken rice or insistence upon the production of a permit, would be distinct in relation to each of the petitioners. The acts of the respondents are not the same but different and distinct acts in relation to several individual petitioners giving rise to distinct and different causes of action. The relief which they would be entitled to would depend upon the proof of those facts and the relief would be peculiar to the individual petitioners. One of the

petitioners may establish the facts alleged while the others may not. The relief may be granted to one but refused to others depending upon the facts and circumstances of each one of the cases. None of the petitioners would be entitled to the relief jointly or severally or in the alternative, on proof of a single set of facts. If they were to file separate suits, except the common question of law on which there is no dispute now, questions of fact peculiar to each one of them would arise for enquiry and decision.

11. From the averments in the petition, it does not appear that any instructions, written or oral, have been issued by any of the respondents herein pursuant to which their subordinates are acting uniformly in similar situations. The allegation that each one of the subordinates at the commercial taxes check posts is insisting upon the production of a permit, is not traceable to any common instructions issued by any of the respondent! herein. It is the individual act of the members of the check post staff that gives rise to the cause of action for the writ petitioners. We, therefore, do not think that a single writ petition by several such persons lies.

12. Section 6(3)(a) of the A. P. Court-fees and Suits Valuations Act lays down that where a suit is based on two or more distinct and different causes of action and separate reliefs are sought in respect thereof, either alternatively or cumulatively, the plaint shall be chargeable with the aggregate amount of the fees that would be chargeable on the plaints under the Act if separate suits were instituted in respect of the several causes of action. This again does not speak of the number of persons that may join in a suit based on two or more distinct and different causes of action for separate reliefs. If a single suit or petition could be filed in respect of two or more distinct and different causes of action as in the case of the petitioners and similar reliefs could be sought, even then the aggregate amount of court-fees that would be payable by each one of them would be payable even if they were to join in filing a single suit or petition.

13. In *Mota Singh v. State of Haryana*, : AIR 1981 SC484 (supra) a similar question came up for consideration before their Lordships of the Supreme Court in relation to the liability of the truck pliers on highway to pay tax individually. Though each one of the truck owners raised the same contention and questioned their

individual liability to pay tax, when they joined in filing a single writ petition, the Supreme 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.' So too in this case each one of the petitioners, whose vehicle transporting rice or broken rice was stopped by a particular check post officer on a particular day, would be entitled to question that particular action in relation to his goods.'

The Supreme Court further observed (atp. 485):

'A firm as understood under the Partnership Act or a company as understood under the Indian Companies Act, if it is entitled in 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 in-dependent petition and each such person would be liable to pay legally payable court-fee on his petition.'

The Supreme Court emphasised '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'. 'The Supreme Court directed scrutiny of each of the petitioners and observed:

'In ascertaining this fact, the office should ascertain whether there are number of petitioners who are combined in one petition; the position of each qua the co-petitioners: and the relief claimed and determine the liability of such petitioner to pay court-fee for the relief sought by him,'

If it is thus clear from the pronouncement of the Supreme Court that what has to be determined in assessing the liability to pay court-fee is as to whether the relief claimed by each of the petitioners is based on a distinct cause of action, whether there is any jural relationship between one petitioner and the others and what the relief claimed by each one of them is. From the decision of the Supreme Court it does not appear that the further question whether a single writ petition is maintainable was gone into. Only the question whether each of the petitioners should be called upon to pay court-fee in view of the separate cause of action peculiar to him was considered and it was held that each one of them should pay a separate set of court-fee.

14. However, from what is stated by the petitioners and analysed above, there can be little doubt that the cause of action for each of the petitioners, who have joined in filing a single writ petition, is a separate and distinct cause of action peculiar to himself with reference to the person who has stopped the vehicle, transporting the goods, the place where he has stopped and the reason for which he has stopped. As early as in *Annam Adinarayana v. State of Andhra Pradesh* : AIR 1958 AP16 a somewhat similar question came up for consideration before a Division Bench of this Court. Subba Rao, C. J. (as he then was) speaking for the Bench held (at p. 19 of AIR):

'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 of relief arises from the same act or transaction and there is a common question of law as 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,'

That was a case in which two Supervisors of a Market Committee, Guntur were disbanded in view of an order of the Market Committee in R. C. No. 1280/56A2 dated 26th October, 1956. After referring to the case law, the learned Chief Justice of the Division Bench summed up the petition as stated above. Applying that test, the Court held that the two petitioners therein were aggrieved by the single act of

the Collector in issuing R. C. No, 1280/56/A-2 dated 26-10-1956 and a common question of law and fact arose for decision in that writ petition and it was held that a single writ petition was maintainable. t HIS position of law has stood the test of time and no decision to the contrary has been brought to our notice.

15. The petitioners have no relation with each other either as partners or any other legally subsisting jural relationship. No common question of law or fact arises for determination to grant them relief. The right to relief does not arise from same act at transaction or a series of acts and transactions. We have, therefore, no hesitation in holding that if each of the petitioners in the above cases could be allowed to join in filing a single writ petition each one of them must pay a separate court-fee of Rs. 100/-.

16. Mr. Jwala. learned counsel for the petitioners, placed very strong reliance upon a passage in. the decision of the Supreme Court in A. B. S. K. Sangh (Railway) V. Union of India, : (1981)ILLJ209SC , para 63 where, dealing with an objection that the 1st petitioner being an unrecognised association of persons, no writ petition was maintainable by them, the Supreme Court observed :

'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 petitioner 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 jurisdiction 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 abjection to a non-recognised association maintaining the writ petitions.'

It must be immediately pointed out that the observations therein were in relation to the maintainability of the petition by an unrecognised association and not regarding the court-fee payable by several persons who have chosen to join in filing a single writ petition. Maintainability of the petition is one thing and liability to pay court-fee is another. It is in that context that the observations were made with respect to the cause of action and not in the content of the liability to pay court-fee with reference to the provisions of the Court-fees Act and the relief claimed by each of the petitioners on the basis of the cause of action arising out of the facts peculiar to each individual petitioner. These observations of the Supreme Court do not in any way militate against what is laid down by the Supreme Court itself in *Mota Singh v. State of Haryana* : AIR 1981 SC484 (supra) specifically with reference to the liability of each of the petitioners to pay court-fee; on writ petitions under Articles 226 and 32 of the Constitution.

17. Having regard to the above discussion we hold that these several petitioners cannot join in filing a single writ petition. Even if they are allowed to join, they would be liable to pay court-fee as if each of them has filed a separate writ petition and each one of the petitioners would have to pay; Rs. 100/-. As we have held that a single writ petition by several petitioners is not maintainable and as the learned counsel for the petitioners state that they may be permitted to amend the writ petition by striking off the names of the other writ petitioners except the 1st petitioner, the petitioners are allowed to amend the same accordingly. The petitioners are permitted to file separate writ petitions on behalf of each of the petitioners whose names have been struck off from the several writ petitions before us. The petitioners are permitted to effect the necessary amendment and retain the name of the 1st petitioner alone. After each writ petition is so amended, the mailers, may be placed before the learned single Judge for admission.

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