
(1972) 38 CLT 1338

Orissa High Court

Case No: O.J.C. No. 1026 of 1970

Brahmani Club

APPELLANT

Vs

State of Orissa and
Others

RESPONDENT

Date of Decision: Nov. 14, 1972

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Motor Vehicles Act, 1988 - Section 47
- Orissa Public Demands Recovery Act, 1962 - Section 2
- Orissa Sales Tax Act, 1947 - Section 12(5), 13(5)
- Trade Unions Act, 1926 - Section 13

Citation: (1972) 38 CLT 1338

Hon'ble Judges: R.N. Misra, J; B.K. Ray, J

Bench: Division Bench

Advocate: A.B. Misra and D.C. Ray, for the Appellant; Standing Counsel, for the Respondent

Judgement

R.N. Misra, J.

This is lion application made under Articles 226 and 227 of the Constitution for issue of a writ of certiorari to quash the proceedings in a certificate case under the Orissa Public Demands Recovery Act and to set aside demands raised under the Orissa Sales Tax Act which gave rise to the certificate proceedings. The Petitioner has also prayed for a declaration that Section 2 of Orissa Act 29 of 1967, by which the Orissa Sales Tax Act of 1947 was amended is ultra vires.

2. The Petitioner is a Club and has been represented through its Joint Secretary, Sri H. Bedi. The Club has a set of rules and regulations, a copy where of has been appended to the writ application as Annexure-I. The Sales Tax Officer, Rourkela Circle at Uditnaga assessed the Club to sales tax u/s 12(5) of the Orissa Sales Tax Act for the years ending 31.3.1966, 31.3.1967 and 31-3-1968. There Was also a further assessment for the

quarter ending 30-6-1968. As the dealer did not pay the demand, penalty was imposed u/s 13(5) of the Act in respect of each of the assessments. When the dealer did not, satisfy the demand of tax And penalty as directed, proceedings were taken to recover the tax and penalty under the provisions of the Public Demands Recovery Act. That gave rise to the certificate case which is asked to be quashed in this writ application.

3. Serious dispute has been raised to the maintainability of the writ petition. We shall, therefore, proceed to deal with the question of maintainability first and if the petition is found maintainable. we shall then examine the merits of the various contentions raised in the application.

4. The preliminary point regarding maintainability is on the basis of the allegation raised in paragraph 25 of the counter affidavit. It was alleged that:

The writ application is not maintainable in view of being filed by the Joint Secretary when Rule 16 of Annexure-1 clearly provides that it shall be in the name of the Secretary of the Club. The Petitioner has not produced any appointment letter for the satisfaction of the Court or opposite parties that the Joint Secretary has been appointed for the purpose by the Managing Committee. The Petitioner ought to be called upon to produce the authority falling which the writ application ought to be dismissed.

A rejoinder was filed about seven months after to the counter affidavit. In paragraph 2 thereof, it has been asserted:

Sri H. Bedi, the Joint Secretary of the Brahmani Club, Rourkela, was duly authorised by the said Club to file the aforesaid writ petition on behalf of the Petitioner and the Managing Committee of the said Club has duly appointed the said Joint Secretary and authorised him to file the aforesaid writ application on behalf of the Club under Rule 16, read with Rule 22, of the Rules and Regulations of the Managing Committee of the Brahmani Club and as such the Joint Secretary of the Club is the proper person to file this writ application on behalf of the Club. As Joint Secretary of the Club he is also otherwise entitled to have the same powers and functions of the Secretary and that the Managing Committee may sue in his name and Joint Secretary of the Club.

In a further affidavit for countering the allegations raised in the rejoinder, the taxing Department indicated:

The averment in the rejoinder to the effect that Sri H. Bedi, the Joint Secretary of the Brahmani Club; Rourkela, was duly authorised by the said Club to file the aforesaid writ petition on behalf of the Petitioner and that the Managing Committee of the said Club had duly appointed the Joint Secretary and authorised him to file the aforesaid writ application on behalf of the Club is based on no evidence and the said Joint Secretary of the Club has no locus standi to file and maintain the writ application on behalf of the members of the Club as will be clear from Rule 16 of the rules and regulations of the Managing Committee of the Brahmani Club...The Joint Secretary of the Club is not the Secretary of

the Managing Committee of the Club as will be clear on a bare reading of Rule 7 which mentions the Secretary and the Joint Secretary separately and the Joint Secretary has produced no evidence and no resolution of the Managing Committee to prove that he has been appointed by the Managing Committee to sue on its behalf though the objection to the maintainability of the writ application was taken as early as 14.12.1970, when the counter affidavit on behalf of the opposite party No. 2 was filed and a copy of it was served on the Advocate for the Petitioner. As such, the writ application having been filed by a person who is not competent to represent the Club is not maintainable and deserves to be dismissed.

The submission in the rejoinder to the effect that as Joint Secretary of the Club the Petitioner is also otherwise entitled to have the same powers and functions of the Secretary and that the Managing Committee may sue in his name as Joint Secretary of the Club is absolutely untenable.

5. It is not disputed that the Petitioner-Club is not registered under the Societies Registration Act. Mr. Misra for the Petitioner does not contend that it has a legal entity. Clause 16 of what is said to be the rules of the Club reads as follows:

The Managing Committee may sue or be sued in the name of the Secretary of the Managing Committee of Club or in the names of such other office bearers as may be appointed by the Managing Committee from time to time.

Strictly speaking the Managing Committee of the Club is not before this Court. The Club and its Managing Committee cannot be construed to be the same entity by any stretch of imagination. Rule 16 deals with the litigation by or against the Managing Committee and not of the entire Club. Even if it is conceded that the provision really deals with litigations on behalf of or against the Club itself and no distinction is maintained between the Managing Committee and the Club as such, the Joint Secretary may have no authority to represent the Club without a clear appointment in that behalf.

6. The writ proceeding have now been taken as a civil proceeding in this country unless the proceeding is one relating to habeas corpus. The Club-not being a legal entity would not be entitled to maintain a civil action in its own name. The position may be different in regard to statutory remedies under the Act. Where the Club is a dealer, under the special statute relating to assessment, the Club as qua dealer would certainly be entitled to maintain appeals and other proceedings envisaged by the statute. But in a civil litigation that principle cannot apply and a civil proceeding not the instance of the Club only may not be tenable.

7. The objection raised has thus to be seen from two stand-points. Firstly, it is to be found out whether the proceeding itself by the Club only is maintainable & then it has to be seen that if the Club could maintain the petition, whether it has been duly represented in terms of the rules relating to the matter.

In the case of G.I.P. Railway Senior Institute v. Mohit Kumar AIR 1951 Nag. 29, Mudholkar, J. as his Lordship then was, dealing with an unregistered Club held:

That an unregistered and non-proprietary Club is not a juridical person and as such cannot sue or be sued has been held in N.E.P. Club v. Sadullah ILR All. 497, Michael v. Bridggs ILR Mad. 362, Scott Oldfield v. Firm of Cooperative Stores AIR 1925 Sind. 244 and [Bhagwandas Singh and Others Vs. Pinjra Pole Pashu Anathalaya](#) . Where an unregistered and non-proprietary association like a Club has to be made liable the proper course is to sue individually the members thereof or to sue only those persons who have rendered themselves personally liable in respect of a contract or tort as the case may be.

Justice A.N. Ray, J. as his Lordship then was, in the Calcutta High Court examined the question in the case of [Rajendra Nath Tikku Vs. The Royal Calcutta Turf Club](#) . In paragraph 5 of his Lordship's judgment, it was stated:

...It may be stated here that Lord Parker in "the London Association for Protection of Trade v. Greenlands Ltd. (1916) 2 App Cas 15, said that the Association which is not a corporate body, nor a partnership nor a creation of statute could not be made a Defendant in its name. A member's Club which is an unincorporated and unregistered body is not a legal entity which can be sued in its own name His Lordship quoted with approval the observations of an earlier decision of the same Court in the Case of Munshilal and Sons v. Modi Bros 51 Cal. Weekly Notes 563, where Das, J. as his Lordship then was stated:

I do not think that the notion of a firm name or a joint family business name ought to be extended to a Club name. A Club name is not regarded as a compendious name in the sense that a firm name or the trading name of a joint Hindu family business is. regarded by lawyers and business people.

The position was further examined by a learned Single Judge of the Calcutta High Court in the case of [Director General Ordnance Factories Employees' Association Vs. Union of India \(UOI\) and Director General Ordnance Factories](#) , Hasu, J. laid down.

In cases where the right of a collective body to bring proceedings under Article 226 is challenged, two questions have to be answered:

- (a) Is the Petitioner a legal entity or otherwise permitted by statute to initiate legal proceedings in its own name?
- (b) Has it been affected by the impugned order as a collective body?

So far as the first question is concerned, it is patent that a legal proceeding may be maintained only by an individual or other body which is recognised as a legal person.

In the case of a body incorporated by law, the corporate body acquires a legal personality of itself and is as such entitled to maintain legal proceedings. But an unincorporated Association has no legal personality and it is nothing but an aggregation of its members who can only bring legal proceedings in their individual capacity. Even when all of them are affected by an official act, they can challenge that only if all the members join in the proceedings by name; the Association in such a case, cannot maintain an application under Article 226 or other legal proceeding in its own name, 808 has been established by a number of decisions [Indian Sugar Mills Association Vs. Secy. to Government, Uttar Pradesh Labour Department and Others](#), [General Secretary, Eastern Zone Insurance Employees" Association Vs. Zonal Manager, Eastern Zone, Life Insurance Corporation and Others](#), and even registration under the Societies Registration Act cannot confer this right-Bangalore District Hotel Owners Association v. District Magistrate, Bangalore AIR 1951 Mys. 14.

To the foregoing general rule, certain exceptions have been introduced by the provisions of certain statutes, e.g.:

(i) A registered union is made a body corporate by Section 13 of the Trade Union Act, 1926, and is empowered to sue and be sued in its own name.

(ii) Under the Industrial Disputes Act, 1947, an Association of workmen has a right to raise Industrial disputes and to represent the workmen throughout the proceedings- [Ram Prasad Vishwakarma Vs. The Chairman, Industrial Tribunal](#), and can thus move against an award under the Act [West Bengal Press Workers" and Employees" Union Vs. Art Union Printing Works Private Ltd. and Others](#),

(iii). u/s 47 of the Motor Vehicles Act, even an unincorporated Association can make a representation in the manner of grant of a permit and can pursue that right in a proceeding under Article 226. [Sabitri Motor Service Ltd. Vs. Asansol Bus Association](#), .

In this view of the matter, we have to hold agreeing with the learned Standing Counsel that an unincorporated Club like the Petitioner is not entitled to maintain the proceeding under Article 226 of the Constitution, In Its name.

8. In view of what we have said above, It may not be very necessary to deal with the second aspect of the objection of maintainability which is on the footing that the Joint Secretary does not represent the Club under the rules of Club. We have already indicated that Rule 16 deals with representation of the Managing Committee and not the Club as such he Joint Secretary is certainly not the Secretary. A person cannot invoke jurisdiction of the Court in a representative capacity on behalf of others as Secretary of the Association in the absence of such authority. But that question would only arise if the Association as such is entitled to sue. In the present case, since the Club is not entitled to maintain the action in its name, the question of its being represented through an authorised person does not fall to be determined.

9. We accordingly accept the preliminary objection to the maintainability of the writ petition. As we hold that the petition is not maintainable in the name of the Club, the writ application must be dismissed as not maintainable without examination of the merits of the contentions raised in the petition. The writ application is accordingly dismissed, but without costs.

B.K. Ray, J.

10. I agree.