

Tripura Bar Association Vs State of Tripura and Others

Court: Gauhati High Court (Agartala Bench)

Date of Decision: May 20, 2004

Acts Referred: Constitution of India, 1950 " Article 226

Citation: (2005) 1 GLR 150

Hon'ble Judges: T. Vaiphei, J

Bench: Single Bench

Advocate: D.K. Biswas and P.R. Barman, for the Appellant; B.R. Bhattacharjee, S. Deb and T.D. Majumder, for the Respondent

Final Decision: Dismissed

Judgement

T. Vaiphei, J.

This writ petition filed by the Tripura Bar Association is directed against the Notification No. F.5(7)-REV/87 dated

5.2.2002 issued by the Revenue Department, Govt. of Tripura by which the Advocates even if they enroll themselves as a Member of the Bar

Council, are not allowed to practice deed writing without obtaining deed writing licence from the competent authority. The Bar Association also

challenges the vires of Tripura Registration (Amendment) Rules, 1989 which are framed u/s 69(bb) of the Indian Registration Act, 1908.

2. Heard Mr. D.K. Biswas, learned Counsel appearing for the petitioner -Bar Association. I have also heard Mr. B.R. Bhattachajree learned

senior Counsel assisted by Mr. S. Deb and Mr. T.D. Majumder, learned Counsel appearing on behalf of the respondents.

3. At the very outset, Mr. B.R. Bhattacharjee, learned senior Counsel for the respondents has raised preliminary objection on the maintainability of

the writ petition on the ground that the Tripura Bar Association is an unregistered association and this association, which is not a legal entity, cannot

sue in its name. Thus, according to the Counsel for the respondent, the writ petition is not maintainable and is liable to be dismissed on this score

alone at the very threshold. The learned Counsel for the respondents further submits that where a number of individual are affected by an official

act, they can ordinarily bring a legal proceeding to challenge that act only if such persons are joined together in the proceeding by name and that in

case all the members of the Tripura Bar Association are adversely affected by the impugned notification, they ought to have joined in the writ

petition by named. In support of his contention, learned Counsel for the respondents cited the following cases, namely, (1) Sumerchand Jain Vs.

State of Gujarat and Another, (2) Vinoy Kumar Vs. State of U.P. and Others, (3) Zila Dastavej Lekhak Association, Banda and another Vs.

State of U.P. and others, (4) Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another,

4. Per contra, Mr. D.K. Biswas, learned counsel for the petitioner submits that Tripura Bar Association is an association of all the advocates of

Tripura and by the resolution dated 8.2.2002 passed by the members of the Association it has decided to file this writ petition and authorised the

Secretary to do the needful vide Annexure 1 to the writ petition and that since the impugned notification has affected the rights of the members of

the Association to practice deed writing and to appear before the Registering authority, the Association has locus standi to file this writ petition.

Strong reliance is placed by the learned Counsel for the petitioner on the following decisions, namely, (1) Municipal Committee, Bhatinda Vs. Land

Acquisition Collector and Others, (2) The Scheduled Caste and Weaker Section Welfare Association (Regd.) and another Vs. State of

Karnataka and others, (3) Akhil Bharatiya Soshit Karamchari Sangh (Railway) represented by its Assistant General Secretary on behalf of the

Association Vs. Union of India (UOI) and Others, (4) Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others,

5. Admittedly, the association namely Tripura Bar Association is not a registered association under any provision of law. The law regarding locus

standi is now firmly settled by the Apex Court in Vinoy Kumar's case (supra). The Apex Court held at para-2 as under :

Generally speaking, a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his

fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired

interests having been violated ignoring the applicable rules. The relief under Article 226 of the Constitution is based on the existence of a right in

favour of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas corpus

or quo warrant or filed in public interest. It is a matter of prudence that the court confines the exercise of writ jurisdiction to cases where legal

wrong or legal injuries are caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or

injury at the instance of a third party where there is an effective legal aid organisation which can take care of such cases. Even in cases filed in

public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or

illegal burden is threatened and such person or determined class of persons is, by reason of poverty, helplessness or disability or socially or

economically disadvantaged position. Unable to approach the court for relief.

6. This writ petition is not a writ of habeas corpus or qua warrant or filed in public in public interest. Therefore, the short question which falls for

determination is whether an association which is an unregistered Association can file this writ petition other than by way of PIL or representative

action. In All Manipur DIC Supervisor's Association's case (supra) where the petitioners' Association was found to be a non-recognised

association, the learned Single Judge of this Court (P.C. Phukan, J) has held that in the absence of any evidence to show that the members of the

petitioner association are unable to approach the Court by reason of poverty, disability or a socially or economically disadvantaged position ("little

Indians") and that even if the Rules or Regulations of the petitioner association specifically authorised it to take legal proceeding on behalf of its

members, the writ petition filed by the petitioner association was not maintainable. In the case at hand, the members of the petitioner association do

not belong to that class of persons who, due to poverty, disability or socially or economically disadvantaged position ("little Indians"), are unable to

approach this Court. All the members of the Association in their personal capacity or in a representative capacity can certainly file a writ petition, if

they are really aggrieved by the impugned notification. As pointed out earlier, this writ petition is not even a public interest litigation or a

representative action and, as such, the writ petition cannot be held to be maintainable.

7. The law regarding standing or locus standi in India has been succinctly summarized by the Calcutta High Court in Sand Carrier's Owner's

Union and others Vs. Board of Trustees for the Port of Calcutta and others, which are reproduced below :-

(a) Individual Standing - Legal personality means persons who are regarded under the law as person being capable of exercising right or having

duty have locus standi to move writ application. Individual person aggrieved by any action or inaction the part of a State or authority under Article

12 of the Constitution which infringed his right, can move the writ application. Similarly partnership firm, company corporation, labour union etc.

can file a writ application if their rights are directly affected.

(b) Statutory standing - When statute has conferred standing or locus standi to any association or persons who may not have a direct personal

interest can maintain writ application if it is established that such person or association had been conferred under the statute certain right and that if

that right has been infringed. As for example trade union have a right to file writ application as the Industrial Disputes Act had conferred right

conferred upon the trade union had been infringed. Similarly, under Motor Vehicles Act, Section 47(1) of the Motor Vehicle Act before its

amendment, conferred power upon the association of operators to file objection and that in connection with the objection filed by those

associations the associations had a right to move writ application.

(c) Public Interest and citizen participation -In case of public interest litigation the persons concerned who move such writ application not for

enforcing his personal right but filed by public spirited and individual espousing the cause of large number of people who are suffering under some

legal wrong or injury and such person or determined class of person is by reason of poverty, helplessness or disability or socially or economically

disadvantaged position, unable to approach the Court for relief and in such case any member of the public can maintain writ application.

(d) Representative action or class action - Representative action or class action may be initiated by any members of the class affected by any order

or action or inaction on the part of the government and/or authorities and in such a case a large number of persons of the same class may be

affected by any action and in such case any one member of that class can file writ application and can prosecute the same as representative

application after obtaining leave of the Court and in such case, the principle laid down in O.1 Rule 8 is followed by which after the notice is issued

pursuant to the order of the court, any member of the class who are affected by such order may join in such writ application as a petitioner and that

the members of that class are bound by such decisions. This is permitted by law to avoid multiplicity of proceedings and in such case any decision

taken in such case binds the members of class.

14. Unincorporated associations are not legal persons and as such, writ petitions are not maintainable. An association could be formed to protect

the interest of consumers, tenants or other groups with the common interest but such group cannot move writ application. No aspect of the

representative law has been changing more rapidly than the law governing standing and the standing barrier has been substantially lowered in recent

years, but on the basis of the law relating to standing as in England or in America as also in India, it can be held without any difficulty that the writ

petition at the instance of an association is not maintainable where the association itself is not affected by any order. The members of such

association may be affected by common order and may have common grievance, but for the purpose of enforcing the rights of the members, writ

petition at the instance of such associations is not maintainable. The door of the writ court could be made open at the instance of persons or

authorities under the aforesaid four categories and to hold that every Tom, Dick and Harry can move the writ application would render the

standing requirement meaningless and would introduce a procedure which is not judicially recognised.

8. In my considered view, the above summary of the laws relating to locus standi, with due respect, clearly reflects the correct legal position. I have

carefully gone through the authorities cited by Mr. D.K. Biswas, learned Counsel for the petitioner and found that those decisions were rendered in

the context of public interest litigation, which have no application on the facts of this case.

9. For what has been stated above, the inference is irresistible and the conclusion inescapable that the petitioner association has no locus standi to

maintain this writ petition. Consequently, this writ petition is hereby dismissed. No order as to costs.

The interim order dated 14.2.2002 passed in CM. Appl. No. 76 of 2002 stands vacated.