

**A.F.R.****Court No. - 37****Case :- WRIT - C No. - 43188 of 2017****Petitioner :- Akhlaq****Respondent :- State Of U.P. And 3 Others****Counsel for Petitioner :- Syed Mehdi Haider****Zaidi,U.C. Chaturvedi****Counsel for Respondent :- C.S.C.****Hon'ble Siddhartha Varma,J.**

This writ petition has been filed by the petitioner for quashing of the order dated 31.8.2017 which was passed by the Joint Commissioner (Food) Saharanpur Division, Saharanpur.

Initially when the respondent no. 4, who was the fair price shop dealer in the area where the petitioner was residing was not running the fair price shop properly, then the petitioner, who was a card holder, alongwith the other card holders,

had filed various complaints. Upon an enquiry being held the licence of the respondent no. 4 was cancelled on 10.3.2017. However, when the appeal filed by the respondent no. 4 was allowed on 21.8.2017, the petitioner filed the instant writ petition.

Sri Brijesh Yadav has put in appearance on behalf of the respondent no. 4 and has also filed his written submissions. Though the counsel for the respondent no. 4 had submitted that the Appellate Order was correctly passed, he made a preliminary objection to the filing of the writ petition by saying that the petitioner who was a card holder and only a complainant had no locus standi to file the writ petition.

Learned counsel for the respondent no. 4 relied upon **2009 (108) RD 689 : Dharam Raj vs. State of U.P. & Others** and submitted that the petitioner was only a complainant and had no

locus standi to file the present writ petition. Learned counsel for the respondent no. 4 relied upon paragraph no. 13 and 17 of the judgement and stated that the petitioner was not a person aggrieved and was only someone who could be called a person who was annoyed by the fact that the fair price shop dealer was being allowed to continue with the fair price shop. He submits that a person is considered to be a person aggrieved if an order operates directly and injuriously upon his personal, pecuniary and propriety rights. In this context, learned counsel for the respondent relied upon **AIR 2005 AP 45 (Kalva Sudhakar Reddy v. Mandala Sudhakar Reddy)**.

Further, learned counsel submitted that under the garb of being a “necessary party” the complainant could not be permitted to espouse the cause of the general public. A person having

only a remote interest cannot be permitted to become a party in the litigation. He submits that one who approaches the Court will have to establish he has propriety rights which have been violated or are threatened to be violated. In this regard the respondent no. 4 referred to **AIR 1971 SC 385 (Adi Pherozshah Gandhi v. H.M. Seervai, Advocate General of Maharashtra)**, **AIR 1976 SC 578 (Jasbhai Motibhai Desai v Roshan Kumar, Hahi Bashir Ahmed & Ors)**, **AIR 1976 SC 2602 (Maharaj Singh v. State of Uttar Pradesh & Ors)**, **2002 (1) SCC 33 (Ghulam Qadir v. Special Tribunal & Ors)** and **2008 (10) SCC 766 (Kabushiki Kaisha Toshiba v. Tosiba Appliances Company & Ors)**.

Further learned counsel for the respondent no. 4 relied upon a judgement of this Court reported in **2017 (5) ADJ 472** and submitted that someone who was aggrieved by the

malfunctioning of the distribution system had a whole machinery of redressal of his or her grievances. Learned counsel for the respondents relied upon paragraphs no. 11 to 28 of the above mentioned judgement and submitted that anybody who was aggrieved by the malfunctioning of the public distribution system had a complete machinery for the redressal of his or her grievance and, therefore, the learned counsel for the respondents submitted that the writ petition should be dismissed on the ground of maintainability at the instance of the petitioner.

Learned counsel for the petitioner in reply to the preliminary objection regarding the maintainability however submitted as follows:-

I. Writ Court can always exercise its jurisdiction under Article 226 of the Constitution of India to see if there was any illegality committed. In fact, he submitted that the writ court had ample

powers to take suo motu cognizance of any illegality which might appear from the record. In this regard, learned counsel for the petitioner referred to **AIR 1958 All 154 (S. Barrow v. State of U.P. & Another), AIR 1962 SC 1044 (Calcutta Gas Company (Proprietary) Ltd. Vs State of West Bengal & Ors.), AIR 2006 All 23 (P.R. Transport Agency v. Union of India & Ors.), 2004 (55) ALR 807 (Dr. Ravindra Kumar Goel & Ors. v. State of U.P.), AIR 1959 All 695 (City Board, Saharanpur v. Abdul Wahid,) and 2011 (2) ALJ 116.**

Learned counsel submitted that a writ court can be approached by just any person against any authority or person. The writ court cannot oust any petition by saying that the same was not maintainable. However, he submitted that it was a different matter that the court might choose to interfere or refrain from interfering. He

submitted that the degree of interference would, however, differ from case to case. In this regard learned counsel relied upon **1999 (1) SCC 741 (U.P. State Cooperative Land Development Bank Ltd. vs. Chandra Bhan Dubey and Others)** and specifically read out paragraphs no. 22 and 27 and, therefore, they are being also reproduced here as under:-

“22. The language of Article 226 does not admit of any limitation on the powers of High Court for the exercise of jurisdiction thereunder though by various decisions of this Court with varying and divergent views, it has been held that jurisdiction under Article 226 can be exercised only when a body or authority, the decision of which is complained, was exercising its power in the discharge of public duty and that writ is a public law remedy. In *Rohtas Industries Ltd. vs. Rohtas Industries Staff Union* (1976) 2 SCC 82 it was submitted before the Constitution Bench that an award under Section 10-A of the Industrial Disputes Act, 1947 savours of a private arbitration and was not amenable to correction under Article 226 of the Constitution. The Court said as under :

"9. The expansive and extraordinary power of the High Courts under Article 226 is as wide as the amplitude of the language used indicates and so can affect *any person* - even a private individual - and be available *for any* (other) *purpose* - even one for which another remedy may exist. The amendment to Article 226 in 1963 inserting Article 226 (1-A) reiterates the targets of the writ power as inclusive of any person by the expressive reference to 'the *residence* of such person'. But it is one thing to

affirm the jurisdiction, another to authorise its free exercise like a bull in a china shop". This Court has spelt out wise and clear restraints on the use of this extraordinary remedy and High Courts will not go beyond those wholesome inhibitions except where the monstrosity of the situation or other exceptional circumstances cry for timely judicial interdict or mandate. The mentor of law is justice and a potent drug should be judiciously administered. Speaking in critical retrospect and portentous prospect, the writ power has, by and large, been the people's sentinel on the qui vive and to cut back on or liquidate that power may cast a peril to human rights. We hold that the award here is not beyond the legal reach of Article 226, although this power must be kept in severely judicious leash.

10. Many rulings of the High Courts, pro and con, were cited before us to show that an award under Section 10-A of the Act is insulated from interference under Article 226 but we respectfully agree with the observations of Gajendragadkar, J. (as he then was) in *Engineering Mazdoor Sabha vs. Hind Cycles Ltd.* AIR 1963 SC 874 which nail the argument against the existence of jurisdiction. The learned Judge clarified at p.640 :

"Article 226 under which a writ of certiorari can be used in an appropriate case, is, in a sense, wider than Article 136, because the power conferred on the High Courts to issue certain writs is not conditioned or limited by the requirement that the said writs can be issued only against the orders of courts or tribunals. Under Article 226(1), an appropriate writ can be issued to any person or authority, including in appropriate cases any Government, within the territories prescribed. Therefore, even if the arbitrator appointed under Section 10-A is not a tribunal under Article 136 in a proper case,' a writ may lie against his award' under Article 226".

27. In view of the fact that control of the State

Government on the appellant is all - pervasive and the employees had statutory protection and therefore the appellant being an authority or even instrumentality of the State, would be amenable to writ jurisdiction of the High Court under Article 226 of the Constitution, it may not be necessary to examine any further the question if Article 226 makes a divide between public law and private law. Prima facie from the language of the Article 226, there does not appear to exist such a divide. To understand the explicit language of the Article, it is not necessary for us to rely on the decision of the English courts as rightly cautioned by the earlier Benches of this Court. It does appear to us that Article 226 while empowering the High Court for issue of orders or directions to any authority or person, does not make any such difference between public functions and private functions. It is not necessary for us in this case to go into this question as to what is the nature, scope and amplitude of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari. They are certainly founded on the English system of jurisprudence. Article 226 of the Constitution also speaks of directions and orders which can be issued to any person or authority including, in appropriate cases, any Government. Under clause (1) of Article 367, unless the context otherwise requires, the General Clauses Act, 1897, shall, subject to any adaptations and modifications that may be made therein under Article 372, apply for the interpretation of the Constitution as it applies for the interpretation of an Act of the Legislature of the Dominion of India. "Person" under Section 2(42) of the General Clauses Act shall include any company, or association or body of individuals, whether incorporation or not. The Constitution is not a statute. It is a fountain head of all the statutes. When the language of Article 226 is clear, we cannot put shackles on the High Courts to limit their jurisdiction by putting an interpretation on the words which would limit their jurisdiction. **When any citizen or person is wronged, the High Court will step in to protect him, be that wrong be done by the State, an instrumentality of the State, a company or a cooperative society or association or body of individuals, whether incorporated or not, or even an individual.** Right that is infringed

may be under Part III of the Constitution or any other right which the law validly made might confer upon him. But then the power conferred upon the High Courts under Article 226 of the Constitution is so vast, this court has laid down certain guidelines and self-imposed limitations have been put there subject to which High Courts would exercise jurisdiction, but those guidelines cannot be mandatory in all circumstances. High Court does not interfere when an equally efficacious alternative remedy is available or when there is established procedure to remedy a wrong or enforce a right. A party may not be allowed to by-pass the normal channel of civil and criminal litigation. The High Court does not act like a proverbial 'bull in china shop' in the exercise of its jurisdiction under Article 226.

II. The writ court cannot oust any petitioner at the very outset by saying that a writ petition at his or her behest would not be maintainable and cited **1986 (2) SCC 594 (Chaitanya Kumar & Ors. vs. State of Karnataka & Ors)**. Learned counsel submitted that the Court cannot close its eye to any illegally and uphold the mischievous acts of any Government executive whatsoever. Learned counsel submitted that if at the very first instance it is apparent from the record that a mischievous act was being upheld by the executive by their omission or by their active assistance then nobody should be stopped from coming to the

writ court.

III. Learned counsel for the petitioner further submitted that the meaning of "aggrieved person" was very broad and submitted that in the definition of an "aggrieved person", a personal harm had not to be essentially given out. A person, he submits, could be aggrieved by the happenings around him. He can feel aggrieved by the action or omission of the executive which affects him as also his acquaintances. Learned counsel submits that definitely a person who makes a sweeping allegation of misdeeds or of omissions would not be allowed to approach the writ court but such a person who bonafidely comes across a misdeed which was taking place around him definitely can approach the writ Court. Learned counsel submits that a fair price shop dealer who might be very impolite or brusque in the village can definitely be

proceeded against on the complaint of a person, even if he is only a relative of a card holder. He submits that if an enquiry is wrongly held and if it is found wrongly that the fair price shop dealer was not impolite or brusque then that complainant can always approach the High Court to bring to the notice of the Court that the case of the fair price shop dealer was not dealt with properly at the lower rungs.

IV. Learned counsel for the petitioner relied upon ***AIR 2013 SC 58 (Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra & Ors)*** and specifically read out paragraph 22 and so the same is being reproduced here as under :

"Thus, from the above it is evident that under ordinary circumstances, a third person, having no concern with the case at hand, cannot claim to have any locus-standi to raise any grievance whatsoever. **However, in the exceptional circumstances as referred to above, if the actual persons aggrieved, because of ignorance, illiteracy, in articulation or poverty, are unable to approach the court, and a person, who has no personal agenda, or**

object, in relation to which, he can grind his own axe, approaches the court, then the court may examine the issue and in exceptional circumstances, even if his bonafides are doubted, but the issue raised by him, in the opinion of the court, requires consideration, the court may proceed suo-motu, in such respect."

He submitted that writ court, therefore, can always examine an issue which had not been raised by the actual person aggrieved but had been raised on his behalf.

V. Learned counsel for the petitioner further submits that the case of ***Dharam Raj (supra)*** in view of the ratio laid down in the Supreme Court decision of ***Ayaubkhan Noorkhan Pathan vs. State of Maharashtra & Ors. reported in AIR 2013 SC 58*** may not be relied upon while dealing with a writ petition filed by a complainant. He, therefore, submitted that in the back drop of the submissions made by him a complainant could not be ousted at the very first instance without looking into his grievances.

Having heard the learned counsel for the petitioner and the respondents, I am of the view that a writ petition at the behest of a complainant could not be simply dismissed by saying that it was not maintainable. Definitely, this Court feels that the ratio as has been laid down in **Ayaaubkhan Noorkhan Pathan (supra)**, a complainant definitely has a right to approach this Court. It is another matter as to whether this Court would interfere with the orders challenged in his writ petition or not.

The writ petition therefore cannot be thrown out at the very first instance in view of the law laid down in **Ayaaubkhan Noorkhan Pathan (supra)** by saying that it was not maintainable. Whether interference is required would be another matter.

Under such circumstances, the respondents may file their counter affidavits within three

weeks. The petitioner shall have two weeks time to file a rejoinder affidavit thereafter.

List thereafter.

While parting, the Court would like to record its appreciation to the assistance rendered by Sri Vishal Tandon, Advocate, who was by an order dated 21.11.2017 requested to assist the Court.

Order Date :- 5.2.2019
praveen.

(Siddhartha Varma,J.)