

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

THURSDAY, THE 02ND DAY OF JULY 2020 / 11TH ASHADHA, 1942

WP(C).No.36372 OF 2017(S)

PETITIONER:

'JUSTITIA', P.B.NO.833
MAVOOR ROAD, CALICUT,
REPRESENTED BY ITS SECRETARY FAIZAL P.,
S/O. AHAMMEDKUTTY, 'NAHAR',
KUNNATHUPAAMBU, ARTS COLLEGE P.O.,
KOZHIKODE.

BY ADVS.
SRI.M.M.ALIYAR
SRI.SUNIL NAIR PALAKKAT
SRI.K.N.ABHILASH
SRI.M.A.AHAMMAD SAHEER

RESPONDENT:

- 1 STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM - 695 001.
- 2 TOM JOSE
ADDITIONAL CHIEF SECRETARY,DEPARTMENT OF
LABOUR,THIRUVANANTHAPURAM - 695 001.

(RESPONDENT NO.2 IS DELETED FROM THE PARTY
ARRAY AT THE RISK OF THE PETITIONER AS PER
ORDER DATED 08/03/2019 IN IA.NO.01/2019)

R1 BY SRI.K.V.SOHAN, STATE ATTORNEY
BY SR.GOVERNMENT PLEADER SRI. SURIN GEORGE IPE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 02.07.2020, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 2nd day of July, 2020

S. Manikumar, CJ

A group of lawyers, claiming themselves to be working for the welfare of the down trodden people in Kerala, seemed to have formed an association “Justitia” and filed instant writ petition for a writ of prohibition or appropriate order to set aside G.O.(Ordinary) No.1325/2016 labour dated 27.10.2016 (Exhibit P1) as unconstitutional. Petitioner has also sought for a declaration that issuance of chip based ID card with biometric capture to a class of people is violation of fundamental right to privacy.

2. On this day, when the matter came up for hearing, placing reliance on the decision of this Court in W.P(C). No.23724 of 2016 dated 1.7.2020, Mr. Surin George Ipe, learned Senior Government Pleader submitted that direction issued in the above suo motu writ petition is applicable to instant writ petition also.

3. First of all, there are no materials indicating that 'Justitia' represented by its Secretary is a registered association. Earlier in W.P(C). No.11686 of 2020 dated 19.6.2020, this Court held that unregistered body has no locus to file writ petition. Relevant paragraphs

are extracted below :

“(i) In **The North Arcot District Pawn Brokers' Association and Ors. v. The Secretary to Government of India, Ministry of Finance (Department of Revenue and Insurance) and Ors.** reported in (1975) 1 MLJ 290, the High court of Madras opined as follows:

“13..... It is well established that only a person whose rights are alleged to have been threatened or transgressed or on whom obligations are imposed by any statute can approach this Court invoking the jurisdiction of this Court under Article 226 of the Constitution of India. It is not the case of any these Associations that the Association as such is carrying on business of pawnbroker and therefore the said Association as such has been called upon to discharge any obligation or perform any duty imposed by the Gold Control Act. Therefore, the said Associations cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India. That is the view taken by Ramaprasada Rao, J., in his judgment dated 3rd April, 1973 in *The Polur Town Panchayat Taxpayers Association v. The Polur Town Panchayat and Ors. W.P. No. 2197 of 1972 dated 3rd April, 1973.* in respect of a writ petition filed by the Polur Town Panchayat Tax Payers' Association challenging the levy of tax made by the Panchayat. The learned Judge pointed out;

The petitioner is admittedly a society registered under the Societies Registration Act. Under Section 6 every society no doubt can sue or be sued in its name and the provisions of the Act make the society a legal entity by itself. It has a separate existence in the eye of law and can act in its own name and in the manner prescribed by the Act. It therefore, follows that the petitioner association is an independent legal person.

If such an independent legal person approaches this Court exercising extraordinary jurisdiction and demands an issue of rule in the nature of certiorari, then it should be in a position to

establish beyond doubt that its legal right is affected or by the enforcement of the challenged or impugned order, the petitioner would be aggrieved.

In holding that the association as such could not file a writ petition, the learned Judge followed an earlier decision of a Bench of this Court in *Authoor Vivasaya Abhivirdhi Sangam and Ors. v. State of Madras by the Secretary to Government, Revenue Department, Fort St. George, Madras-9 W.A. Nos. 49 to 52 and 58 to 60 of 1963*. The Bench also was dealing with writ petitions filed by certain registered and unregistered Associations and with reference to those associations, the Bench pointed out:

The appellants in W.A. Nos. 49, 52 and 60 of 1963 are associations which have been registered under the Societies Registration Act. Those in W.A. Nos.51 and 58 and 59 of 1963 are unregistered associations which cannot be regarded as having any independent legal existence. They cannot obviously file or maintain applications under Article 226 of the Constitution. Even as regards registered societies it cannot be said that they are persons aggrieved by the order of the Government. It has not been claimed that the associations or any one of them own lands in the ayacut and that the imposition of the additional assessment directly affected them or the particular association as a society. It may be that the members of the association feel aggrieved by the enhancement of the assessment, and in that sense the society might perhaps be interested in doing all things necessary for getting them reliefs. That cannot amount to legal grievance of the society.

Having regard to this legal position established by the decisions of this Court, I hold that these writ petitions filed by the three associations are not maintainable and therefore they are dismissed."

(Emphasis supplied)

(ii) In **Tamil Nadu Panchayat Development Officers Association, Madras v. Secretary to Govt. of Tamil Nadu, Rural Development and Local Administration Dept., Madras and Ors.** reported in AIR

1989 Mad 224, a Hon'ble Full Bench of Madras High Court observed as follows:

"7. The question that has been referred to a Full Bench by a Division Bench to which one of us (Mohan, J. as he then was) is as follows : –

"Whether an unregistered association can maintain a writ petition under Article 226 of the Constitution of India." After going through the papers and on hearing the counsel, we are of the view that in view of Rule 2-B of the Rules framed by virtue of Article 225 of the Constitution, to regulate proceedings under Article 226 of the Constitution, this question pales into insignificance, as any body of persons who wish to jointly agitate a matter or espouse a common cause can invoke the benefit of the said rule. Accordingly, we hold that an unregistered Association cannot maintain the writ petition."

(Emphasis supplied)

(iii) In **Porathissery Panchayat Tax Payees Association v. Executive Officer and Ors.** 1989 (1) KLJ 664, this Court held as follows:

"By expanding the principle of locus standi third parties were permitted to approach the court when there are physical restraint such as in habeas corpus cases or when socio economic factors are involved, and when volunteer representatives are allowed to approach the court on behalf of the poor and oppressed (See *Gobindram v. Union of India A.I.R. 1981 S.C. 928 (Bhagalpur blinded prisoners)* and in *Olga Tellis v. Bombay Municipal Corporation - A.I.R. 1986 S.C. 180 (Bombay Pavement Dwellers)*). There are also cases where no traditional individual rights existed to be vindicated but rights diffused among the public generally are to be vindicated when under the principle of citizen standing, the petition was entertained. These are cases relative to residuary power to Transfer of Judges in *S.P. Gupta & others v. President of India & others - 1982 S.C. 149;*"

The law relating to locus standi, payment of court fee etc. cannot be ignored by the petitioner in challenging the individual assessment orders. The larger question whether an unincorporated association of persons can file a writ petition also arises. When a number of individuals are affected by an official act, they can ordinarily bring a legal proceeding to challenge that only if all such persons join in the proceedings by name, except where the law confers upon them, a legal personality as a collective body such as an association which is incorporated by statute or formed under a statute."

(iv) In **Sand Carrier's Owner's Union and Ors. v. Board of Trustees for the Port of Calcutta and Ors.** reported in AIR 1990 Cal.176, the High Court of Calcutta observed as follows:

"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 association 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.”

(Emphasis supplied)

(v) In **Jalore District Teachers' Association, Jalore v. State of Rajasthan and Ors.** (RLW 1997(2) Raj. 1091), the High Court of Rajasthan, while dealing with the Jalore District Teachers' Association case, observed as follows:

“5.....in view of the latest Supreme Court judgment in case of *Shri Mahendra Kumar Gupta vs. Union of India (1995 JT (1) SC 11)* as well as full bench judgment of Jaipur Bench of this Court in case of *R.S.E.B. Accountants Association, Rajasthan, Jaipur through its convenor Tej Singh Arora v. R.S.E.B. and another [1995 (3) WLC 1]* It is not in dispute that the petitioner association is not a registered association. The Apex Court as well as Full Bench of this Court have held that the unregistered association has no fundamental right to approach this Court under Article 226 of the Constitution of India. The Full Bench of this Court in the case of *R.S.E.B. Accountants' Association (supra)* has laid down certain conditions for entertaining such petitions, which are (a) That the members of the said association should have sufficient strength so as to come in the category of a large sect of public, (b) That the members should be identifiable, (c) That the members must be of the category of poor/illiterate/helpless or disabled, (d) That the individual member must not be capable of filing a writ petition, (e) That the entire body of the members must authorise the association to protect their legal rights, (f) That such an association must have its own Constitution, and (g) That there must be authority to file a writ petition on behalf of all the members.

8. In view of the above, there is no alternative for this Court but to dismiss this writ petition solely on the ground of maintainability of the writ petition as it was filed by the unregistered association, which

is not maintainable. Accordingly, it is dismissed.”
(Emphasis supplied)

(vi) In **Parents Teachers Association and Ors. v. Chairman, Kendriya Vidyalaya Sangathan and Ors.** reported in AIR 2001 Raj 35, the High Court of Rajasthan speaking for the Bench, Chief Justice Dr. A. R. Lakshmanan, in paras 12 and 13 observed as under:

“(12). The appellant-petitioners have not placed before this Court any document to show that the Parents- Teachers Association is a registered and recognised association. The writ petition has been allegedly filed in public interest and the alleged large interest of the students. It is evident that the so-called Parents- Teachers Association is an unregistered and unrecognised association and, therefore, in our view, has no fundamental right to approach this Court under Article 226 of the Constitution. This point has been concluded by the decision of the Apex Court in the case of *Mahendra Kumar Gupta v. Union of India and ors.* (JT 1995 (1) SC 11); and by the decision of Full Bench of this Court in the case of *R.S.E.B. Accountant's Association of Rajasthan v. The R.S.E.B.* (1995(3) WLC 1, RLW 1995(2) Raj. 495). A reply to the preliminary objection raised by the respondents was also made by the appellants. It is stated that the Parents-Teachers Association has been recognised by the KVS and that the Principal is the Vice Chairman of the said Association and hence, the Association is competent to file the writ petition on behalf of the students. In our view, the above reason cannot be considered as a valid reason for maintaining the writ petition. It is not in dispute that the Association is not a registered body and recognised Association. Thus, after examining this point of law in detail and placing reliance on various judgments delivered by the Apex Court from time to time, the Full Bench of this Court in the case of *RSEB Accountant's Association* (supra) held as under:

It may also be observed that an unregistered association has no fundamental right to approach this Court under Article 226 of the Constitution and this point is concluded by the decision in the case of *Shri Maninder Kumar Gupta v. Union of India, Ministry of Petroleum and Natural Gas (1995) 1 SCC 85*. A decision in the case of *Akhil Bharatiya Soshit Karamchari Sangh v. Union of India and Ors. (1981) 1 LLJ 209 SC* was relied where the non-registered Association was held to apply under Article 32 of the Constitution. We may observe that there had been number of the instances of public interest litigation where large body of persons is having the grievance against inaction of the State. Even letters have been considered to be a writ petition but all these are the matters where large section of public is affected and the personal interest of any person or a smaller section as in the present case, is not involved. Even in the case of *People's Union for Democratic Rights v. Union of India (1982) II LLJ 454 SC* when the question of locus standi was considered, the Hon'ble Supreme Court had taken into consideration the poverty, illiteracy and the ignorance obstructing and impeding accessibility of the judicial process and on that ground it was considered that the writ petition can be filed. In *D.S. Nakara and Ors. v. Union of India (1983) I LLJ 104 SC* the old pensioners individually were unable to undertake journey through labyrinths of costly and protracted legal judicial process for allowing to espouse their cause. In case of *S.P. Gupta and Ors. v. President of India [1982] 2 SCR 365* poverty, helplessness and disability or social or economic disadvantaged, position was considered a sufficient ground for maintaining the writ petition. There had been other decisions of the Apex Court as well and principles which emerge from all of them are as under:

- (a) That the members of the said association should have sufficient strength so as to come in the category of a large sect of public.
- (b) That the members should be identifiable.

(c) That the members must be of the category of poor/illiterate/helpless or disabled.

(d) That the individual member must not be capable of filing a writ petition.

(e) That the entire body of the members must authorise the association to protect their legal rights.

(f) That such an association must have its own Constitution, and

(g) That there must be authority to file a writ petition on behalf of all the members.

(13) In the instant case, none of the grounds mentioned above in (a) to (g) have been satisfied by the present appellants to maintain the writ petition. Since the above conditions are not fulfilled such an unregistered association cannot file writ petition in respect of the legal rights of the said association for the alleged breach of fundamental right as the association itself has no fundamental right of its own.

(vii) In **Joint Action Committee of PWD, Manipur v. State of Manipur and Ors.** 2008 (Supp.) GLT 131, at paragraphs 8 and 9, it was held as under:

"8. This Court has given anxious consideration to the submissions of the learned Counsel of the rival parties as well as the records available and the Law Reports referred to by the learned Counsel. It is an admitted position that the present writ petitioner is not a registered Association as required to be a Juristic person to file a writ petition before the court of law. Tough in the writ petition, the petitioner Contended that it is the representative of 3 registered trade Unions/Associations but in support of its contention, no document is annexed to the writ petition and also there is no such averment in the petition to the effect that the disengaged M.R. Workers are the members of it, rather, it appears from the records that 7 persons, who were re-engaged by the respondents, they themselves filed

separate writ petitions Challenging their respective order of disengagement and this Court in those writ petitions passed order in favour of them. As the respondents initially did not comply with the order of this Court, those M.R. workers filed Contempt petitions before this Court and while the contempt petitions, being Contempt No. 127 of 1998, 234 of 1999 and 233 of 2002 were pending, the respondents re-engaged them which will be evident from Annexure-A/12 to the rejoinder affidavit filed by the petitioner. Unless the fundamental and/or legal and any other right of a citizen and/or juristic person has been affected by any action of the authority and/or any body and if the petitioner filed any writ petition challenging the wrong action of any authority in which it is in no way connected in such wrong action, this Court should not exercise its discretionary power under Article 226 of the Constitution of India, as the present case is one of such cases. The aforesaid observation is based on the decision of this Court as well as the Apex Court.

9. This Court in the case of All Manipur DIC Supervisors (supra) specifically held that when an Association is not a registered one under the Societies Registration Act, 1860 or under any other then the writ petition filed by such Association is not maintainable. Same view was expressed by this Court in its Judgment and order dated 22.6.2005 in WP(C) No. 902 of 2002 and the judgment and order dated 28.2.2005 passed in WP(C) No. 978 of 2004. Even in the case of Land Used Board (supra) this Court also held that an unregistered Association is not a Juristic person and that apart no legal or any other right of the said Association was violated and, hence, the said Association was violated and, hence, the said Association was not aggrieved person. This Court further held in the aforesaid decisions that since the grievance of the members of the said Association were never aggrieved, they ought not to have filed writ petition as any legal right, if any, were never infringed and the instant writ petition ought not to be maintained.”

(Emphasis supplied)

(viii) In **Meghalaya Wine Dealers Association and Ors. v. State of Meghalaya and Ors.** reported in 2010 (2)

GLT 673, the High Court of Guwahati held as follows:

"8.....Now, the question before us, whether such an unregistered association can be a legal person to bring an action under Article 226 of the Constitution. The fact that the petitioners' association still remains an unregistered association can be located/spotted from Annexure 1 to the counter affidavit filed by respondent Nos. 1 to 3. Annexure 1 is a communication of the Registrar of Societies, Meghalaya, Shillong dated 22.11.2009 addressed to the Commissioner of Excise, Meghalaya, Shillong wherein it has been stated/indicated that for want of certain documents as indicated therein at Sl. No. 1 to 3, "Shillong Wine Dealers Association" could not be registered as "Meghalaya Wine Dealers Association" as desired by the applicant. This communication goes to show that though an application was made for alteration of the name and for registration, the Registrar of Societies, Meghalaya, Shillong was unable to register the society for want of documents in the altered name, namely, "Meghalaya Wine Dealers Association", therefore, apparently, "Meghalaya Wine Dealers Association" remained unregistered till date and it cannot file a writ petition under Article 226 of the Constitution challenging the vires of the amended rules and the new rule of the amended Rules.

9.....Now the question, before us is whether the petitioner, "Meghalaya Wine Dealers Association" can assumed the character of either a juristic person or legal person without registration and can bring the writ petition challenging the vires of the amended and new rules. "Meghalaya Wine Dealers Association" is an association of the licensees who obtained such licences for running liquor business in the State of Meghalaya. Each

individual licence holder if is aggrieved by any action of the Government or the respondent authorities can bring an action under Article 226 of the Constitution but individual licence holder cannot file writ petition for each and every licence holder unless they form an association and such association is registered. When the association is registered under the relevant Act such association assumes the character of a juristic person or a legal person which may sue or may be sued. This "Meghalaya Wine Dealers Association" admittedly being not a registered society under the Meghalaya Societies Registration Act, it cannot file writ petition against the respondents seeking relief as indicated in the writ petition and in that situation the writ petition so filed by such unregistered association would be not maintainable.

11. The issue whether unincorporated association even if recognized by the Government according to the Central Services (Recognition of Service Association) Rules, 1959 can bring an action or in other words file a writ petition under Article 226 of the Constitution is answered in the case between **Director General Ordnance Factories Employees' Association v. Union of India and Director General Ordnance Factories** AIR 1969 Cal. 149. Learned Judge of the Calcutta High Court while rendering the judgment in the case (supra) in paragraph 6 to 9 answered the issue as under:

"6. Before entering into the merits of the petition, it is necessary to dispose of the preliminary objection taken on behalf of the respondent 3, namely, that the Petitioner, being an unincorporated association, cannot maintain an application under Article 226 and that the grievance, if any, of its members should be agitated in appropriate proceedings brought by them in their individual capacity.

9. 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, as has been established by a number of decisions. (*Indian Sugar Mills Asscn. v. Secy. to Government U.P. Labour Dept.* AIR 1951 ALL 1 (FB); *General Secy. Eastern Zone Insurance Employees' Asscn. v. Zonal Manager, Eastern Zone Life Insurance Corporation* AIR 1962 Cal 45) and Registration Act cannot confer this right. (*Bangalore District Hotel Owners' Association v. District Magistrate, Bangalore* AIR 1951 Mys. 14)."

13. Said judgments have laid down the principles of law in public interest writ petitions. In the light of the decisions of the Courts in India, on the law of precedents, with due respect, Guruvayur Devaswom Managing Committee's case (cited supra) cannot be said to have laid down a law on the issue of maintainability of a Public Interest Litigation or even a writ petition by an unregistered body. Even in Swaraj Abhiyan's case (cited supra), there was no specific issue as to whether an unregistered body can maintain a writ petition or not. Reliance on Swaraj Abhiyan's case (cited supra) would not support the petitioner. 'Person' refers to human being. 'Jurstic person' refers to a body recognized by the law as being entitled to rights and duties in the same way as a natural or human person. In the case on hand, Prathyasa Mental Health Counselling forum, through its Programme Co-

ordinator, an unregistered body does not fall within the definition of juristic person.

14. On an analysis of law relating to precedents, binding effect of interim orders and maintainability of filing a writ petition by an unregistered body, and the facts and circumstances of this case, we are of the view that instant writ petition filed as Public Interest Litigation by an unregistered body viz., Prathyasa Mental Health Counselling forum, through its Programme Co-ordinator, is not maintainable. Writ petition fails and accordingly, dismissed. No costs.”

4. For the above said reasons writ petition is not maintainable.

Directions issued in W.P(C). No.23724 of 2016 dated 1.7.2020, apply to the facts of this case also.

For the above said reasons writ petition is dismissed.

Sd/-
S. Manikumar,
Chief Justice

Sd/-
Shaji P. Chaly,
Judge

W.P(C).36372/2017

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APPENDIX

PETITIONER'S/S EXHIBITS:

EXHIBIT P1	TRUE COPY OF G.O NO. 1325/2016/LABOUR THIRUVANANTHAPURAM DATED 27.10.2016
EXHIBIT P2	TRUE COPY OF ENROLLMENT FORM (6) BIOMETRIC CAPUTE FOR AVAZ INSURANCE FOR GUEST WORKERS.