

HIGH COURT OF MADHYA PRADESH

W.P. No. 2903/2021

(JYOTI SAWASAHTA SAMOOH THR. PRESIDENT YASHODA Vs THE STATE OF MADHYA PRADESH AND OTHERS)

Jabalpur, Dated : 22.02.2021

Shri Anirudh Pandey, learned counsel for the petitioner.

Shri Manu V. John, learned Panel Lawyer for the respondents/State.

By this petition, the petitioner is not challenging any order against him, however, he is seeking an appropriate order/direction towards the respondent authority to initiate action against the respondent No.5, who allegedly took the grain rice and use it for personal purpose.

The contention of petitioner is that he has filed a complaint regarding this to the authority concerned, however, no action has been taken against the respondent No.5 as he is the teacher in the said school. He further prayed that as the petitioner has spent some amount for maintaining the mid-day-meal of the concerned school so the authority may be directed to reimburse the same to the society.

Learned Panel Lawyer for the respondents/State at the outset has taken an objection regarding the maintainability of the petition. It is submitted that the petitioner is only a complainant and hence, no locus to file this petition as he is aggrieved by any order passed by the authorities. He has further stated that as far as reimbursement of the amount is concerned, the petitioner is at liberty to file an appropriate application before the authority concerned for release of the

said amount. However, for that purpose he cannot directly approach the High Court under Article 226 of the Constitution of India.

Having heard the learned counsel for the parties at length and on perusal of the documents on record, it is observed that this petition deserves to be dismissed.

It is settled proposition of law that only a person who has suffered or suffers from legal injury can challenge the act/action/order etc. in a Court of law. There is no dispute that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person, except in the case where the writ prayed for is for *Habeas Corpus* or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest.

Who can said to be a person aggrieved, has been considered by the Supreme Court in the case of ***Ayaubkhan Noorkhan Pathan Vs. State of Maharashtra and others (2013) 4 SCC 465***, wherein the Supreme Court has observed :-

“9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the Authority/Court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right.

Infact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. (Vide: [State of Orissa v. Madan Gopal Rungta](#), AIR 1952 SC 12; [Saghir Ahmad & Anr. v. State of U.P.](#), AIR 1954 SC 728; [Calcutta Gas Company \(Proprietary\) Ltd. v. State of West Bengal & Ors.](#), AIR 1962 SC 1044; [Rajendra Singh v. State of Madhya Pradesh](#), AIR 1996 SC 2736; and [Tamilnad Mercantile Bank Shareholders Welfare Association \(2\) v. S.C. Sekar & Ors.](#), (2009) 2 SCC 784).

10. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardised. (Vide: [Shanti Kumar R. Chanji v. Home Insurance Co. of New York](#), AIR 1974 SC 1719; and [State of Rajasthan & Ors. v. Union of India & Ors.](#), AIR 1977 SC 1361)."

The status of the petitioner in the present case, as claimed is at the most of a complainant, he therefore, cannot claim the status of an adversarial litigant. A complainant cannot be the party to the *lis*. A legal right is an averment of entitlement arising out of law. Thus a person who raises a grievance must show that he has suffered some legal injury [vide **(2012) 4 SCC 407 Ravi Yashwant Bhoir Vs. District Collector, Raigad and others**].

In the instant case, the petitioner is only a complainant, who has filed a complaint against the respondent No.5. Hence, it is for the authority concerned to take action against him. It is seen from the documents filed along with the petition that the notice has already been issued to the respondent No.5. As far as the prayer that the amount spent by the petitioner for maintaining mid-day-meal be released to him, it is for the petitioner to file an appropriate

application before the authority concerned and cannot approach this Court directly for that purpose.

In view of the aforestated legal position, the petitioner has no locus to file this petition. The right to avail a remedy cannot extend to misuse the judicial process. Resultantly, this petition is dismissed.

(Nandita Dubey)
Judge

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