N. K. S.

Before S. S. Sandhawalia, C.J. and S. S. Sodhi, J.

RAVINDER SINGH KALEKA AND OTHERS,—*Petitioners*

versus

UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ Petition No. 375 *of* 1982.

November 1, 1983.

Constitution of India 1950—*Article* 226—*Punjab Re-organisation Act* (XXXI *of* 1956)—*Section* 78—*Inter-State Water Disputes*

Act (XXXIII of 1956)—Section 11—Constitutionality of section 78 and validity of an Award rendered thereunder challenged in writ proceedings by private parties—Such parties—Whether have a locus standi to maintain the writ petition—Section 11 of the Inter-State Water Disputes Act—Whether bars the jurisdiction of the High Court to entertain the petition—Dispute pertaining to Inter-State rivers—Award rendered between the States—Whether could be challenged only by the effected States.

Held, that it is more than manifest that a new jurisprudence has now whittled down this traditional rule in regard to *locus standi* that a writ petitioner who has himself suffered a legal injury alone can seek judicial redress. The widened horizon of the concept of *locus standi* has now been made applicable equally to a public wrong or a public injury suffered by the citizen. It has now to be held that whenever there is a public wrong or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting *bona fide* and having sufficient interest can maintain an action for redressal of such public wrong or public injury. The strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is evolved which gives standing to any member of the public, who is not a mere busy-body or a meddlesome interloper but who has sufficient interest in the proceeding. Further any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law and seek enforcement of such public duty and observance of such constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realisation of the constitutional objective. Therefore, where the constitutionality of section 78 of the Punjab Re-organisation Act, 1966 and the Award rendered thereunder is challenged by a private person then that person who is seeking a judicial redress, for an alleged public wrong arising from the breach of a public duty, has *locus standi* to maintain a writ petition under Article 226 of the Constitution of India 1950.

(Paras 7 and 8)

Held, that it seems manifest from the provisions of section 11 of the Inter-State Water Disputes Act, 1956 that the bar operates in respect of any water dispute which may be referred to a Tribunal under this Act. Where no reference with regard to any dispute pertaining to the rivers, has at any stage been referred to any Tribunal under the Inter-State Water Disputes Act, 1956, section 11 does not get attracted.

(Para 10).

Civil Writ Petition under Article 226 of the Constitution of India;

AND

In the matter of Act 31 of 1966 (Punjab Re-organisation Act) and section 78 thereof;

AND

In the matter of Notification dated 24th March, 1976 made by Government of India (Ministry of Agriculture and Irrigation) under section 78(1) of Act 31 of 1966;

AND

In the matter of Agreement dated 31st December, 1981 as reported in the Press (Annxure P-2) made in variance of the aforesaid notification dated 24th March, 1976; AND

In the matter of Allocation by Government of India of Ravi-Beas waters between the States of Punjab and Haryana, praying that this Hon'ble court may be pleased to issue appropriate writ, order or directions :—

(a) *declaring 1955 decision by the Central Government purporting to allocate waters of the Eastern Rivers (Sutlej, Beas and Ravi) as bad and of no effect; and restraining Union of India and State of Rajasthan from further implementing the same;*

(b) *declaring that the provisions of the Punjab Re-organisation Act, 1966 in so far as they purport to authorise the Central Government to make determination with respect to the waters of the rivers Beas Project and allocation or distribution of such waters is* ultra-vires *the competence of Parliament and violative of Article 246(3) of the Constitution;*

(c) *declaring that the orders contained in the Notification dated 24th March, 1976 (Annexure P-1 is invalid and void;*

(d) *declaring the agreement dated 31st December, 1981 (Annexure P-2) between the State of Punjab Haryana and Rajasthan etc. as bad;*

In the alternative to the above prayer the petitioners pray that it may be declared that the extent of allocation to Haryana of waters in excess of 0.9 MAF in the Scheme of the Beas Project

as defined, is invalid and contrary to law. The Central Government and the State of Haryana be restrained by an order and injunction from enforcing any claim as against the State of Punjab in respect of allocation of water as a result of Beas Project in excess of 0.9 MAF.

Such further and other reliefs be granted to the petitioners as may be found just, proper and convenient to this Hon'ble Court so as to effectually implement the legal rights of the petitioners.

M. S. Khaira, Advocate, (H. S. Bhullar and B. S. Malhotra, with him), *for the Petitioner.*

J. L. Gupta, Senior Advocate, with Amarjit Chaudhry, for *Union of India.*

Harbhagwan Singh, A.G., *for State of Haryana.*

A. S. Sandhu, Additional A.G., *for State of Punjab.*

Ashok Bhan, Senior Advocate, with Mukul Mudgel, Advocate, *for the State of Rajasthan.*

JUDGMENT

S. S. Sandhawalia, C.J.

(1) At the threshold of the portals of the Court, the very *locus standi* of the 23 writ petitioners to enter is frontally assailed on behalf of the respondents in this set of five cases. For the limited purpose of this motion order, it seems unnecessary to advert to the facts in any great detail. Suffice it to mention that the significant constitutional and even national issues sought to be raised in these writ petitions *inter alia* are :—

(i) the constitutional validity of Section 78 of the Punjab Re-organisation Act, 1966 and the very legislative competence of Parliament to enact the same in the context of legislative entry-17 of List-II and entry-56 of List-I of the Seventh Schedule to the Constitution ;

(ii) even assuming that Section 78 of aforesaid is *intra vires,* the Award given by the Prime Minister and notified by the Central Government in the gazette of March 24, 1976 purported to be under Section 78 above, is nevertheless *ultra vires,* illegal and void ;

(iii) that the subsequent agreement amongst the Chief Ministers of Punjab, Haryana and Rajasthan, in the presence of the Prime Minister on December 31, 1981, is equally beyond the scope and ambit of Section 78 aforesaid ;

(iv) that in any case the exercise of the power under Section 78(1) and under the proviso thereto is not in proper constitutional form ;

(v) that even on the assumption that the agreement of Chief Ministers of Punjab, Haryana and Rajasthan of December 31, 1981 is contractual in nature, the same does not satisfy the mandatory requirements of Article 299 of the Constitution of India and is, therefore, void and unenforceable ;

(vi) that the State of Rajasthan being not a successor State within the meaning of the Punjab Re-organisation Act, 1966 and also being not a co-riparian State with regard to the rivers of Ravi and Beas, was wholly ineligible for being a party to the purported agreement ; and

(vii) that Section 78 aforesaid pertaining to the sharing of assets between the successor States in so far as sharing of water sources, stood completed and exhausted by the Beas Project Report.

2. Apart from the pristinely legal issues, what is substantially at stake herein is the allocation of the waters of Ravi and Beas primarily betwixt the States of Punjab and Haryana. Though the challenge herein goes back to the Award of the Prime Minister notified on March 24, 1976, under Section 78 of the Punjab Re-organisation Act, 1966 (hereinafter called 'the Act,), subsequent agreement betwixt the States of Punjab, Haryana and Rajasthan of December 31, 1981, is more pointedly under attack.

3. Now it was not disputed before us that the issue of *locus standi* has primarily to be adjudged on the pleadings in the writ petitions and the basic *lis* and the primary issues raised therein. Herein, an assiduous attack is first launched on the constitutionality of Section 78 of the Act itself. Indeed, the very competence of Parliament to enact this Section is challenged as being beyond entry 56 of List-I of the Seventh Schedule to the Constitution and being

wholly within entry 17 of List-II thereof. That being the position, there is no gainsaying the fact that the High Court under Article 226 of the Constitution is indeed the proper if not the only forum for raising the issue of the constitutionality and competence of Parliament to enact Section 78 of the Act. Indeed, the learned counsel for the respondents very fairly did not seriously controvert this position. It seems to be somewhat plain that ordinarily no legal bar can be raised and no specific provision could be pleaded before us which can forbid the writ petitioners to put into issue the very validity of Section 78 of the Act. It follows, therefore, that if Section 78 of the Act is applicable or attracted in the circumstances, then the writ jurisdiction is the proper forum for seeking such a remedy.

4. Since the argument here revolves around Section 78 of the Act, it is apt to quote the relevant part thereof :—

> *"Rights and Liabilities in regard to Bhakra-Nangal and Beas Projects* :—
>
> (1) Notwithstanding anything contained in this Act but subject to the provisions of Sections 79 and 80, all rights and liabilities of the existing State of Punjab in relation to Bhakra-Nangal Project and Beas Project shall, on the appointed day, be the rights and liabilities of the successor States in such proportion as may be fixed, and subject to such adjustments as may be made, by agreement entered into by the said States after consultation with the Central Government or, if no such agreement is entered into within two years of the appointed day, as the Central Government may by order determine having regard to the purposes of the Projects :
>
> Provided that the order so made by the Central Government may be varied by any subsequent agreement entered into by the successor States after consultation with the Central Government.
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> * * * * *

5. In face of the plain language of the aforesaid provision, it appears to us that an argument almost of despair was raised on

behalf of the respondent-State of Haryana that the provisions of the aforesaid Section were not at all attracted to the controversy and therefore, the challenge to its constitutionality was of no great relevance. This stance has to be only noticed and rejected. It is common ground that the Award of the Prime Minister which was later notified on March 24, 1976 and appears to be the foundation-stone of the dispute is in terms under Section 78 of the Act. A bare reference to the said notification makes it plain that the same is expressly sought to be issued under Section 78(1) of the Act and is couched within the para-metres of the said provision. As stands already noticed, this notification is one of the primary acts under challenge. Therefore, to canvass that herein Section 78 of the Act is not attracted, appears to be plainly untenable.

6. The learned Advocate-General, Haryana had then attempted to argue that the agreement of the Chief Ministers of Punjab, Haryana and Rajasthan dated December 31, 1981, in presence of the Prime Minister had superseded the earlier notification under Section 78 of the Act and therefore, the latter had now become irrelevant to the issue. This ancillary contention does not find favour with us. A plain reading of sub-section (1) of Seciton 78 of the Act would show that in the absence of agreement betwixt the successor States the Central Government was empowered to determine the rights and liabilities of each State in the Bhakra-Nangal Beas Project. It was manifestly under the said provision that the Prime Minister's Award was rendered and later duly notified on March 24, 1976. In the opening part of the said notification, it is expressly mentioned that the same was under Section 78(1) of the Act. Now once that is so, it would follow that the subsequent agreement comes squarely within the ambit of the proviso to sub-section (1) wherein the States of Punjab, Haryana and Rajasthan had varied the earlier Award by a subsequent agreement entered into by them. Admittedly Punjab and Haryana were successor States under the Act and this variation had also been done after consultation with the Central Government. Consequently, this would equally be referable to the proviso to Section 78(1) of the Act. Therefore, the said Section directly and substantially falls for consideration whilst dealing with the issues raised in these writ petitions and the question of its vires cannot be evaded or side-tracked. As already noticed at the out-set it is common ground that this Court, acting under Article 226 of the Constitution, is admittedly an appropriate forum therefor.

7. Yet again, the somewhat tenuous stand of the respondents on the question of *locus standi* was that the writ petitioners being private individuals or parties were barred from moving the courts for judicial redress. It was argued that such remedy could only be sought by the States of Punjab, Haryana and Rajasthan and none of them felt aggrieved by the original Award of the Prime Minister nor by the subsequent agreement of the Chief Ministers. It was the respondents' case that since the dispute pertains to inter-State rivers, no public right of the petitioners are infringed to enable them to assail the same either for personal injury or for public wrong. In the alternative, it was argued that the private injury to the writ petitioners by the non-allocation of the water of a river basin and the consequent diminishing of the same for agricultural purpose was minuscule.

8. The aforesaid stand of the respondents might have availed them if the traditional rule in regard to *locus standi*, that a writ petitioner who has himself suffered a legal injury alone can seek judicial redress, were to still hold the field. However, it is more than manifest that a new jurisprudence has now whittled down this traditional rule which is rendered archaic in view of the widened horizon of the concept of *locus standi* and making it equally applicable to a public wrong or a public injury suffered by the citizen. For the purpose of this order, it is unnecessary to trace the development of law in this field in view of the recent authoritative enunciation or reiteration thereof by the Constitutional Bench of seven Judges in *S. P. Gupta and others* v. *President of India, and others* (1). As regards earlier precedent reference may instructively be made to the gradual expansion of the ambit of *locus standi* in *Ram Kishore and others* v. *Union of India and others* (2), *Maganbhai Ishwarbhai Patel* v. *Union of India and another* (3), *Akhil Bharatiya Soshit Karamchari Sangh (Railway)* v. *Union of India and Ors.* (4) and, *Fertilizer Corporation Kamagar Union (Regd.) Sindri and others* v. *Union of India and others* (5). In *S. P. Gupta's case* (supra), their Lordships first traced the long history of the traditional rule of *locus standi* and noticed the relaxation thereof and its

(1) AIR 1982 S.C. 149.
(2) AIR 1966 S.C. 644.
(3) AIR 1969 S.C. 788.
(4) AIR 1981 S.C. 298.
(5) AIR 1981 S.C. 344.

enlargement in the following terms :—

> ".....The view has therefore been taken by the Courts in many decisions that whenever there is a public wrong "or public injury caused by an act or omission of the State or a public authority which is contrary to the Constitution or the law, any member of the public acting *bona fide* and having sufficient interest can maintain an action for redressal of such public wrong or public injury. *The strict rule of standing which insists that only a person who has suffered a specific legal injury can maintain an action for judicial redress is relaxed and a broad rule is evolved which gives standing to any member of the public,* who is not a mere busy-body or a meddlesome interloper but who has sufficient interest in the proceeding."....."

Thereafter, their Lordships concluded as under :—

> "*We would, therefore, hold that "any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or the law* and seek enforcement of such public duty and observance of such constitutional or legal provision. This is absolutely essential for maintaining the rule of law, furthering the cause of justice and accelerating the pace of realisation of the constitutional objective."....."

And further pin-pointed the disastrous results of conforming to the overly strict traditional rule, as under :—

> ".....If no one can maintain an action for redress of such public wrong or public injury, it would be disastrous for the rule of law, for it would be open to the State or a public authority to act with impunity beyond the scope of its power or in branch of a public duty owned by it. The Courts cannot countenance such a situation where the observance of the law is left to the sweet will of the authority bound by it, without any redress if the law is contravened....."

In the light of the aforesaid authoritative enunciation, now there appears to be no choice but to hold that the writ petitioners here,

who are seeking a judiciai redress, for an alleged public wrong arising from the breach of a public duty, are squarely within the rule laid down.

9. In fairness to the learned counsel for the respondents, we must also notice that they sought some sustenance from the provisions of inter-State Water Disputes Act, 1956 and in particular from Section 11 thereof. It was argued that Article 262 of the Constitution authorised the enactment of statutes for adjudication of disputes relating to waters of inter-State rivers or river valleys and further to bar the jurisdiction of the Supreme Court or any other court in respect of such particular disputes. It was submitted that the Inter-State Water Disputes Act, 1956 has been enacted under the umbrella of this provision and consequently the jurisdiction of the High Court was absolutely ousted in all matters including the issue of constitutionality.

10. It is apt to quote Section 11 of the Inter-State Water Disputes Act, 1956, on which particular reliance has been placed :—

> "Bar of jurisdiction of Supreme Court and *other courts* :
>
> Notwithstanding anything contained in any other law, neither the Supreme Court nor any other Court shall have or oxercise jurisdiction in respect of any water dispute which may be referred to a Tribunal under this Act."

It seems to be manifest from the above that assuming everything in favour of the respondents, the bar operates in rsepect of any water dispute which may be referred to a Tribunal under this Act. Admittedly, no reference with regard to any dispute pertaining to the rivers of Ravi and Beas, has at any stage been referred to any Tribunal under the Inter-State Water Disputes Act, 1956. We are, therefore, unable to see how the afore-quoted Seciotn 11 is in any way attracted to the present case. Equally, it deserves notice that the aforesaid statute by virtue of Section 3 thereof only confers the right on the State Governments to raise disputes and make complaints for a reference to the Tribunal. It does not provide any procedure or remedy for the individual citizen for the protection of his public right or the enforcement of public duty by the State Government. The learned Advocate-General, Haryana, had gone to the extreme length of contending that the afore-quated Section 11 would bar the writ jurisdiction of the High Court even with regard

to the constitutionality of the provisions. However, neither principle nor precedent could be cited for this bald assertion. As at present advised, we are wholly unable to read the aforesaid Section 11 as being attracted to the situation or as capable of imposing a bar to constitutional jurisdiction of the High Courts and the Supreme Court to issue the celebrated writs which have become the pillars of the remedies provided by the Constitution itself or to prevent judicial review of the Constitutionality of statutes or the competence of legislatures to enact legislation under the respective entries of the Seventh Schedule. Consequently, the respondents' contention that Section 11 aforesaid would even bar the right of the writ petitioners to assail section 78 of the Act, appears to us as wholly untenable.

11. We must also necessarily notice that in the context of Inter-State rivers and disputes pertaining thereto, the learned counsel for the petitioners had pointed out that neither the river Ravi nor Beas could be treated as inter-State river *qua* the State of Rajasthan because of the admitted geographical position that they do not at any stage whatsoever flow through and even touch its territory. Therefore, it was argued that for the purpose of the Inter-State Water Disputes Act, 1956 even the remedies available to a State could only be attracted in the case of an inter-State river *qua* the disputing parties. Particular reliance was placed on the following observations in the exhaustive and authoritative report of the Narmada Water Disputes Tribunal holding that Rajasthan was not a riparian State *qua* the dispute with regard to the Narmada waters :—

> "Our conclusion, therefore, is that the State of Rajasthan is not entitled to any portion of the waters of Narmada basin on the ground that the State of Rajasthan is not coriparian State or that no portion of its territory is situated in the basin of River Narmada. We also hold that the Reference of the Central Government No. 10/1/69-WD dated 16th October 1969 in referring the complaint of Rajasthan to this Tribunal for adjudication under section 5 of the 1956 Act is *ultra vires* of the 1956 Act Issues 2(b) and 3 are answered accordingly."

12. For the detailed reasons recorded above, we find no scope from the conclusion that the writ petitioners do indeed possess the

requisite *locus standi* to maintain the present writ petitions and they cannot be barred at the threshold. The preliminary objections sought to be raised by the respondents in this context, are hereby rejected. Equally evident it is that not only matters of the constitutionality of statutory provisions, but also issues of considerable significance are raised which undoubtedly call for careful and authoritative consideration. We accordingly admit these writ petitions for hearing by a Full Bench.

13. Some of these writ petitions were filed in this Court way back in January, 1982 and have remained pending at the motion stage at the repeated and joint requests of counsel for the parties apparently in the hope that the issue would be mutually settled out of Court. We consider, however, that now any further delay herein would be inapt and therefore, direct that the cases which are complete, be listed for final hearing on November 15, 1983.

N. K. S.