



Locus Standi

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Hon'ble High Court at Bombay in the Writ Petition No. (L) 5172 of 2021 decided on February 26, 2021, filed by The Goods and Service Tax Practitioners' Association of Maharashtra (GSTPAM), has questioned the locus standi of associations filing writ petitions to extend the date of returns etc. The Association had filed the petition for extension of date of filing of the Annual Return. The Court dismissed the petition. While dismissing the same, amongst other reasons, the Court also stated that a professional body like GSTPAM was before them and an individual tax payer was not expressing any difficulty in filing the Annual Return within the prescribed time or already extended time. In other words, one of the reasons for rejecting the petition was that the GSTPAM had no "locus standi" to file Writ Petition in the court for extension of the prescribed date.

Naturally, there was an uproar throughout India in the tax professionals fraternity. Bombay High Court is one of the premier Courts of India. Any observation of their Lordships of this Court is read and followed with utmost respect throughout India. Normally, the Trade Organisations avoid to approach the court in tax related matters. They have their vested interests. However, such job of compiling the annual return etc. is done by the tax professionals and if they don't get sufficient time to carefully examine the claims and compile them, there is a possibility of loss of revenue on either side

and for which the professionals are at the end of the day blamed by the clients as well as the Government.

In fact, nowadays even tax professionals are being penalised or prosecuted for mis-statements in returns and audit reports, however innocent be such mistakes. For this reason, the associations of tax professionals file writ petitions when the time for completing the compliances is not sufficient. This will of course collaterally benefit the traders, but the same is also essential for safe-guarding the interests of the tax professionals and not just the interests of the traders. Now there is a fear that such associations of tax professional won't be able to approach the Courts of law and equity for any such causes in future. The fraternity had expected the GSTPAM to approach the Supreme Court and get that observation removed. However, since the due date for filing itself was extended thereafter due to executive mercy, the GSTPAM chose not to challenge the judgment in the Supreme Court.

The author is of the firm opinion that these observations of the Bombay High Court, with due respect, are incorrect. Those were also unwarranted. Just prior to the pronouncement of judgment in this case i.e. on January 15, 2021, the same Bench in the case of *CVO Chartered and Cost Accountants' Association v. UOI* had declined to give extension. However, the Court had not questioned the locus standi of that association.

What then is the correct position of law? What is “locus standi”? Whether this judgment of the Bombay High Court will affect the right of the tax professionals to move the Court in similar situations?

The expression “locus standi” has been lucidly explained by the Constitution Bench of the Hon’ble Supreme Court, consisting seven judges, in the year 1981 itself. In that case an individual, namely, Mr. S.P. Gupta had filed PIL (Public Interest Litigation) in the Supreme Court questioning the appointment and the tenure of judges. See what the Court says:

S.P. GUPTA v. UNION OF INDIA (1981) Supreme Court Cases 87

Per Bhagwati, J.

“Where a legal wrong or a legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ in the High Court under article 226 and in case of breach of any fundamental right of such person or a determinate class of persons, in the Supreme Court under article 32 seeking judicial redress for the legal wrong or injury caused to such person or determinate class of persons.(Para 17).

..... the individual who moves the court for judicial redress in cases of this kind must be acting bona fide with a view to vindicating the cause of justice and if he is acting for personal gain or private profit or out of political motivation or some other oblique

consideration, the court should not allow itself to be activated at the instance of such person and must reject his application at the threshold..

(Para 24).

Yet again, 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 the standing to any member of the public who is not a mere busybody or a meddling interloper but one who has sufficient interest in the proceeding. In the absence of a machinery to effectively represent the public interest generally in courts, it is necessary to liberalise the rule of standing in order to provide judicial redress for public injury arising from breach of public duty or from other violation of the Constitution or the law by allowing public minded persons and organisations to move the court and act for a general or group interest, even though, they may not be directly injured in their own rights. It is only by liberalising the rule of locus standi that it is possible to effectively police the corridors of power and prevent violations of law. The operation might be financial, commercial, corporate or governmental.” (Paras 18 and 20). (Underlining by us).

The GSTPAM is a registered tax payer. No doubt, it represents the tax professionals, however, it also approached the Court in its own right. Therefore, the Court was not correct in raising the issue of locus standi. It seems, this particular fact was not brought to the notice of the Court. Even otherwise, the GSTPAM had every right to approach the Court for the

redressal of the injury which was being caused to the members.

The due date for filing annual return as per the GST Act is 31st December of next year. So for the period 2019-20 is concerned, it is 31st December 2020. But the utility thereof was made available for the first time in December 2020 itself. Therefore the department extended it to 28th February, 2021. Further due date for filing income tax return for the year 2019-20 was extended to 15th January 2021 and without finalisation and audit of accounts it was not possible to furnish annual return. It was a most difficult task to compile the requirements of the return, irrespective of whether it was done by the dealer himself or by the tax professionals.

The Supreme Court has stated above that the rule of "locus standi" is required to be liberalised and the persons who have sufficient interest in the proceeding should be permitted to approach the Court. Unfortunately, the Bombay High Court was not able to appreciate the injury which was being caused. Probably the same was not properly put before the Court.

Kindly now see another judgment on the subject, popularly known as Indian Banks Association's case. This case is under the Interest Act, 1974. The interest tax Act was enacted by Parliament with effect from 1.8. 1974 with an object of imposing tax on the total amount of interest received by scheduled banks/ credit institutions on loans and advances. RBI by its circular letter dated 2.9.1991 advised all the scheduled commercial banks that the incidence of interest tax should pro rata be passed on to borrowers wherefore a uniform practice should be followed in consultation with the Indian Banks Association (IBA). The IBA purporting to be acting pursuant to or in furtherance of the said circular as also with a view to formulate a structure of uniform interest rate chargeable after including the interest tax payable, which was passed on to the borrower's by the banks concerned, and advised them

that the rate of interest will be loaded with the interest tax of 3% and rounded up to the next higher 0.25%. Such rounding up was found necessary allegedly on account of the grossing-up involved in calculating the incidence of tax. RBI purportedly gave its approval to the proposal of the IBA in terms of its letter dated 22.4.1993. The aforementioned action on the part of the IBA came to be questioned by the respondents in a public interest litigation filed before the High Court, inter alia, on the ground that such purported rounding up was illegal and without jurisdiction as there by the tax element came to be increased and as a result thereof the banks concerned had collected additional sum of ₹ 7 23.79 crores annually. The High Court found the action on the part of the IBA illegal, arbitrary and untenable. A command was issued inter alia to all the banks to submit an account of the excess interest collected by them from the borrowers and deposit the same with RBI to be debited in the account of the Union Bank of India. The appellants i.e. the IBA approached the Supreme Court by way of special leave petition against the said order. The first objection was about the locus standi of the petitioner before the High Court, the petitioner being a Chartered Accountant's Firm. The observations of the Supreme Court on this issue in the impugned case are interesting and are directly applicable to the GSTPAM case.

INDIAN BANKS' ASSOCIATION, BOMBAY AND OTHERS vs. DEVKALA CONSULTANCY SERVICE AND OTHERS (2004) 11 Supreme Court Cases

'The writ petitioner before the High Court was a firm of Chartered Accountants. As an expert in accountancy and auditing, it must have come across several cases where its client had to pay a higher amount of interest to the banks pursuant to and in furtherance of the impugned action of the appellants. By reason of such action on the part of the appellants and also RBI the citizens of India had to pay a higher

amount of tax as also a higher amount of interest for no fault on their part. The same had been recovered from them without any authority of law.' (Para 32)

'In an appropriate case, where the petitioner might have moved a court in his private interest and for redressal of his personal grievance, the court in furtherance of public interest may treat it as a necessity to enquire into the state of affairs of the subject of litigation in the interest of justice. Thus, a private interest case can also be treated as public interest case.' (Para 34) (Underlining Supplied).

There are many decisions on the subject. All those decisions need not be cited. These two judgments are sufficient to say that even if the Bombay High Court felt that the GSTPAM case was a private interest case, they could have treated it as public interest case. However, they chose not to do so. Reasons are not known. Possibly, the precedential law was not brought to the notice of the court. In fact, Bombay High Court always welcomed the associations. When the author was arguing Abicor's case, it was a private case, however, Hon'ble Justice Dharmadhikari himself invited the GSTPAM to put forth its grievances.

Lastly, to avoid such verdicts, we suggest the following:

- The petition itself should in clear words bring out the relationship of the petitioner with the cause of action and the sufficiency of the interest of the petitioner in the proceedings;
- The injury which is being caused by the act or omission of the State should be clearly brought out in the petition;
- Most importantly, the court should not get the impression that the petitioner has approached the court for his personal gain or private profit. Personal gain or private profit need not be in terms of money. If the Court suspects that the petition has been filed for self-emulation, it will reject the petition at the threshold.

- Many a times the Court gives indication if they were to decide against the petitioner. In such circumstances, it is prudent to withdraw the case, unless the petitioner is ready to approach the higher court.
- Such judgments should necessarily be challenged in Supreme Court otherwise those become a hurdle for others.

To conclude, the Bombay High Court judgment in the case of GSTPAM is not a correct judgment so far it relates to locus standi. In my view, on future occasions, the other associations should request the Bombay High Court to revisit its views on the basis of the law declared by the Supreme Court. However, suggestions made above should also be scrupulously followed.

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