

Wahab Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Mar-03-1998

Reported in : ILR1998KAR1366; 1998(3)KarLJ354

Judge : R.P. Sethi, C.J. and;V. Gopala Gowda, J.

Acts : [Constitution of India](#) - Articles 32, 142, 226, 227, 323-A and 323-B;
[Administrative Tribunals Act, 1985](#) - Sections 5(6), 22(3) and 28

Appeal No. : Writ Petition Nos. 25686 of 1997 connected with Writ Petition Nos. 24843, 24844 and 23708 to 23721 o

Appellant : Wahab

Respondent : State of Karnataka and Others

Advocate for Pet/Ap. : Sri U. Abdul Khader, Additional Government Advocate,
;Sri M.S. Anandarama, ;Sri R.U. Goulay, ;Sri S.V. Narasimhan, ;Sri P.A. Kulkarni
and ;M/s. Adinath Narde, Advs.

Judgement :

ORDER

R. P. Sethi, C.J.

1. In all these petitions, a preliminary objection is required to be decided regarding the maintainability of the writ petitions filed against the orders of the Administrative

Tribunal admittedly passed before 18th March, 1997, the day on which the seven Judges' Bench of the Supreme Court decided *L. Chandra Kumar v Union of India and Others*. Another redeeming feature in these petitions is that all the petitioners had moved the Tribunal under Section 22(3)(f) of the Administrative Tribunals Act for review of its earlier order or for initiating contempt proceedings of the alleged violation of its orders passed before 18-3-1997 and their applications were admittedly rejected after the judgment of the Supreme Court in Chandra Kumar's case. Prior to the judgment of the Apex Court in Chandra Kumar's case, supra, no writ petition with respect to a matter covered by the provisions of the Administrative Tribunals Act was maintainable in this Court in view of provisions of Section 28 of the Administrative Tribunals Act and Articles 323A and 323B of the [Constitution of India](#). The constitutional validity of Articles 323A and 323B of the Constitution and Section 28 of the Administrative Tribunals Act were challenged before the Apex Court in Chandra Kumar's case. The Supreme Court held the aforesaid provisions to be unconstitutional being against the basic features of the Constitution holding it to eclipse the power a judicial review vested in the High Court under Articles 226 and 227 of the Constitution. The Supreme Court concluded:

In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the 'exclusion of jurisdiction' clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Article 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other Courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunals will,

nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by over looking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.

2. The quashing of the offending provisions of the Constitution and the Administrative Tribunals Act meant to declare that this Court had always the jurisdiction with respect to matters specified to be tried by the Administrative Tribunal under the Administrative Tribunals Act. However, the Apex Court found that, despite setting aside of the aforesaid provision, the Tribunals shall continue to be possessing competence to test the constitutional validity of the statutory provisions and rules and they shall continue to act like the Courts of first instance in respect of matters for which they had been constituted and that it will not be open to the litigant to directly approach the High Court even in cases where the question of vires of the statutory legislation is under challenge. The Apex Court further directed that the litigants approaching the Tribunals would be entitled to approach this Court under Article 226/227 of the Constitution and as and when such a petition is filed, the same shall be heard and disposed of by a Division Bench of that High Court within whose jurisdiction the concerned Tribunal fell. In other words, the exercise of jurisdiction by the High Court has been regulated by the Supreme Court presumably in exercise of the power vesting in it under Article 142 of the Constitution.

3. Another aspect of the matter is that the Supreme Court in its discretion concluded that the operation of its judgment was to be prospective in nature and not retrospective. In the absence of a direction to the contrary, this Court was deemed to have been having jurisdiction to entertain petition under Articles 226 and 227 of the Constitution subject to the condition imposed by the Supreme Court vide para 94 of its judgment. However, the Supreme Court categorically held:

The Directions issued by us in respect of making the decisions of Tribunals amenable to scrutiny before a Division Bench of the respective High Courts will, however, come into effect prospectively i.e., will apply to decisions rendered hereafter. To maintain the sanctity of judicial proceedings, we have invoked the doctrine of prospective overruling so as not to disturb the procedure in relation to decisions already rendered.

4. The judgment of the Supreme Court being the law for the country, cannot be interpreted by us in any other manner. It is held that this Court can exercise jurisdiction under Articles 226 and 227 of the Constitution only prospectively with respect to matters considered and disposed of by the Administrative Tribunals and cannot entertain petition with respect to matters considered and adjudicated prior to 18-3-1997.

5. Learned Counsel for the petitioners have contended that, as admittedly the Tribunal had passed the orders in review application after the judgment of the Apex Court in Chandra Kumar's case, this Court had the jurisdiction to entertain the petition and pass appropriate orders. A perusal of Section 22(3)(f) of the Administrative Tribunals Act would indicate that the Tribunal has the jurisdiction of reviewing its decisions. Any order passed in review by itself would not confer a jurisdiction on this Court unless in review the order passed earlier is substantially modified, altered or varied to the prejudice of any one of the parties. Mere refusal to review or rejecting the review petition on merits or declining to initiate contempt proceedings in effect and essence amounts to upholding the earlier order and if such earlier order is passed prior to the judgment of the Apex Court in Chandra Kumar's case, this Court would not have any jurisdiction to entertain a writ petition with respect to such settled disputes. Power of review or power for initiating contempt proceedings cannot be permitted to be resorted to with the oblique motive of seeking an order of rejection for justification to file the writ petition. In view of what we have stated hereinabove, all these petitions are dismissed as being not maintainable having been filed against the decisions and adjudicated rights of the parties prior to Chandra Kumar's case. All these petitions are accordingly dismissed in limine.

