

V.D. Bhaskar Vs. General Manager, N.R., Baroda House and Others

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Court : Allahabad

Decided On : Jul-14-1998

Reported in : 1998(3)AWC2035

Judge : D.K. Seth, J.

Acts : [Constitution of India](#) - Article 32, 136, 226, 227, 323A and B; Administrative Tribunal (Amendment Act, 1985 - Sections 14, 14(1), 19, 28 and 29; Administrative Tribunal Act, 1983 - Sections 21

Appeal No. : C.M.W.P. No. 26743 of 1995

Appellant : V.D. Bhaskar

Respondent : General Manager, N.R., Baroda House and Others

Advocate for Def. : Govind Saran, Adv.

Advocate for Pet/Ap. : S.C. Kushwaha, Adv.

Judgement :

D.K. Seth, J.

1. The petitioner is an employee in the Northern Railway. He was sought to be transferred from one place to another by an order dated 14.7.1995. This order has been sought to be challenged by means of this writ petition.

2. Mr. Govind Saran, learned counsel for the respondents raises a preliminary objection as to the maintainability of the writ petition in view of Section 28 read with Sections 14 and 19 of the Central Administrative Tribunal Act, 1985. According to him, by reason of ouster of jurisdiction and conferment of the jurisdiction on the Tribunal specially constituted under the said Act, the petitioner is precluded from seeking his remedy before this Court under Article 226 of the Constitution on the principle as enunciated by the Apex Court in the case of L. Chandra Kumar v. Union of India and others, AIR 1997 SC 1125, which had only permitted the orders passed by the Tribunal to be amenable to revision of scrutiny by the High Courts under Article 226 of the Constitution while specifically precluding a person seeking a remedy Included in the scheme of the said Act from approaching this Court under Article 226 of the Constitution even if it involves intricate question of interpretation of the constitution of decision with regard to the vires of the statute.

3. Shri S. C. Kushwaha, learned counsel for the petitioner, on the other hand, contends that by reason of various decisions which he had cited, namely, the decisions in the case of Lt. Col. Balraj Chibbar and others v. New Okhla Industrial Development Authority and others, 1995 ACJ 1095 ; Dr. Bal Krishna Agarwal v. State of U. P. and others, 1996 (2) UPLBEC 1055 and A. V. Venkateswaran, Collector of Customs, Bombay v. Ramchand Sobhraj Wadhwani and another, AIR 1961 SC 1566, the existence of alternative remedy will not preclude this Court from entertaining an application under Article 226 of the Constitution particularly when the affidavits have been exchanged and the matter has been entertained by this Court for a quite long time. According to him, the ratio decided in the case of L. Chandra Kumar (supra), in fact has rendered the remedy under the Central Administrative Tribunal Act as an alternative remedy while making the writ jurisdiction under Article 226 of the Constitution available to a person claiming relief in respect of matters falling within the ambit of the said Act either before the Tribunal or before this Court under Article 226 of the Constitution. Therefore, this Court should decide the case on merit on the basis of the ratio decided in the cases cited by him.

4. I have heard learned counsel for the parties at length.

5. Apparently the submission made by Shri Kushwaha appears to be attractive and presupposes raising of an intricate but Interesting question of law having regard to the points of objection raised by Shri Govind Saran, learned counsel for respondents.

6. The question that has been raised before this Court is : (i) as to whether the decision in the case of L. Chandra Kumar (supra), has an impact of rendering the remedy provided under the said Act as an alternative remedy ; or (it) in other words whether the remedy under Article 226 of the Constitution has become available to a person aggrieved by an action which is supposed to be challenged within the ambit of the said Act can also be agitated before this Court under Article 226 of the Constitution ; (iii) whether the ratio decided in the case of L. Chandra Kumar (supra], has an effect of making Section 28 of the said Act inoperative in respect of the jurisdiction under Article 226 of the Constitution exercised as original jurisdiction in respect of such cause of action in order to enable the High Court to entertain such cause of action directly without being routed through the Central Administrative Tribunal.

7. In order to appreciate this question, it is necessary to look into the scheme of the Act with regard to the matters covered thereby.

8. In Chapter III of the said Act, jurisdiction, powers and authority of the Tribunal have been specified. Section 14 prescribes that from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all Courts, except the Supreme Court, in relation to the matters prescribed in clauses (a), (b) and (c) of sub-section (1) of Section 14, the Tribunal was given jurisdiction to exercise the same. Admittedly, the present cause of action is one that falls within one or the other of clauses (a), (b) and (c) of sub-section (1) of Section 14.

9. Thus it appears that by virtue of Section 14, jurisdiction of the High Court exercised under Article 226 of the Constitution in relation to the matters covered by sub-section (1) of Section 14 were bestowed by an act of legislation by the Parliament on a Tribunal created thereunder.

10. Section 19 in Chapter IV prescribes a procedure for making an application before the Tribunal. While Section 20 makes it imperative that such application can be admitted by the Tribunal only when other remedies available are exhausted. Section 28 in Chapter V provides for exclusion of jurisdiction of Courts except the Supreme Court on and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to the matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post. The said exclusion clearly provides that the Supreme Court and the Industrial Tribunal would be only entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters. While Section 29 provides cases pending before any Court immediately before the date of establishment of a Tribunal under this Act be transferred to such Tribunals. Thus, the preclusion of original jurisdiction by other Courts including the High Court are complete. By reason thereof it was sought to be interpreted that even the jurisdiction under Article 226 of the Constitution to scrutinise a decision by the Tribunal was precluded by reason of the provisions.

11. The said provisions clearly indicate that the jurisdiction of the High Court under Article 226 of the Constitution was also excluded by reason of the provision contained in the said Act. Now this exclusion was how far effective was a question that came to be considered in the case of L. Chandra Kumar (*supra*), though previously such question was answered in a different manner in the case of S. P. Sampath Kumar v. Union of India, AIR 1987 SC 386.

12. While considering the said case, the Apex Court without deviating from the view taken in the case of S. P. Sampath Kumar (*supra*), it has explained the situation with regard to the revisional jurisdiction under Article 226/227 of the Constitution in respect of an order passed by the Tribunal and laid down a ratio holding that by no legislation either the Parliament or the State Legislatures, as the case may be. by virtue of sub-clause (d) of clause (2) of Article 323A or by sub-clause (d) of clause (3) of Article 323B of the Constitution, can take away the jurisdiction conferred on the High Court under Article 226/227 of the Constitution which are held to be the basic features of the Constitution that cannot be

excluded. In the said decision, in paragraph 78, the Apex Court has held that 'the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an Integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.'

13. It was further held in paragraph 79 that 'we also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from. that of constitutional interpretation, is equally to be avoided.'

14. At the same time. In paragraph 80. It was held that 'though the subordinate judiciary or Tribunals created under ordinary, legislations cannot exercise the power of judicial review of legislative action to the exclusion of the High Courts and the Supreme Courts, there is no constitutional prohibition against their performing a supplemental--as opposed to a substitutional role in this respect.' That such a situation is contemplated within the constitutional scheme becomes evident when one analyses clause (3) of Article 32 of the Constitution.

15. The Apex Court in the said judgment had expressed their anxiety to preserve the conferment of such a power on the Tribunals. The ratio decided in the case of S. P. Sampath Kumar (supra), was viewed in the said decision with the observation that theory of alternative institutional mechanisms was considered overwhelming since the act sought to attempt to remedy practical situation, therefore, the approach taken in the said decision appears to be most appropriate to meet the exigencies of the time. But after a decade taking stock of the situation, the Apex Court felt that the High Court is called upon to discharge judicial function in respect of various matters jurisdiction due to which the proportion of the case to be dealt with by the High Court has assumed 'catastrophic, crisis-ridden, almost unmanageable, imposing an immeasurable burden on the system'. Therefore, the High Court cannot be burdened with the act of original jurisdiction exercised by the

Tribunal but at the same time, it had held that a decision of the Tribunal on such matters will be subject to the jurisdiction of the High Courts under Article 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction, the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Article 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter. On the analogy that the remedy provided in the said Act by way of an appeal or special leave to the Apex Court appears to be too costly and that the Supreme Court is crowded with decisions of Tribunals requiring the Apex Court to perform the role of the First Appellate Court. Therefore, in the said case, it was held that all decisions of Tribunals, whether created pursuant to Article 323A or Article 323B of the Constitution, will be subject to the High Court's writ jurisdiction under Article 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls, and that no appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution but instead, the aggrieved party will be entitled to move the High Court under Article 226/227 of the Constitution and from the decision of the Division Bench of the High Court, the aggrieved party could move the Apex Court under Article 136 of the Constitution.

16. The ratio decided in the said case was summarised in paragraph 93 of the said judgment which may be beneficial to quote for our present purpose herein below :

'93. Before moving on to other aspects, we may summarise our conclusions of the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set up been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunal will consequently also have the power to test the vires of subordinate legislations and

rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act unconstitutional. In such cases alone, the concerned High Court may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Court. We may add that the Tribunal will, however, continue to act as the only Courts of first instance, in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in case where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.'

17. Thus, the reading of the ratio decided in the said case clearly lays down that it had never declared Section 14 and Section 28 as ultra vires or that the exclusion of original jurisdiction of the High Court were to be Ignored. On the other hand, it had reaffirmed the exclusion of original jurisdiction of High Court in respect of matters covered under the said Act as provided in Section 14 read with Section 28' of the said Act. It had only recognised the scope of scrutiny of the decision by the Tribunal by the High Court as inhered in the High Court under Article 226/227 of the Constitution, on the reasons given in the said Judgment as quoted hereinbefore, and that too by a Division Bench. On the other hand, it had rather shifted the forum of appeal from the decision by a Tribunal under the said Act from the Supreme Court to the High Court, though by way of revision through a proceeding under Article 226/227 while keeping the provision of further appeal by means of Article 136 of the Constitution to the Apex Court which was originally provided in the said Act. Thus, it appears that the ratio of the said judgment has preserved the jurisdiction of the High Court under Article 226/227 of the Constitution as the appellate (revisional to be appropriate) jurisdiction in respect of a decision of the Tribunal though by means of, revision or, in other words, it had opened one more step before springing to the Apex Court from a decision of the Tribunal for the reasons mentioned in the said judgment.

18. Thus, by no stretch of imagination, the said ratio can be interpreted to mean that the remedy provided under the said Act is an alternative remedy to that of Article 226 of the Constitution. The original jurisdiction in respect of the causes falling within the ambit of the said Act had never been made amenable to the jurisdiction of the High Court under Article 226 of the Constitution. Such an interpretation finds support from the very fact that the Supreme Court has not said anything with regard to Section 14 and Section 28 of the Act by which the jurisdiction of the High Court including that of other Courts were excluded in respect of matters covered under the said Act. So long the said sections are not declared ultra vires or struck off, the said sections remain operative in the said Act with full force. The effect of the said sections cannot be ignored. The ratio decided in the case of L. Chandra Kumar (supra), has to be read in consonance with the said two sections, namely. Sections 14 and 28 respectively which are to be reconciled within the scheme of the Act and the ratio decided in the case of L. Chandra Kumar (supra).

19. Having gone through the scheme of the Act and the ratio decided in the case of L. Chandra Kumar (supra), to my mind, it appears that there is no contradiction, conflict or confusion in between the Sections 14 and 28 and the ratio decided in the said case which had specifically laid down that the exclusion with regard to the exercise of original jurisdiction would remain operative while the decision of the Tribunal can be challenged even before the High Court under Article 226/227 apart from Article 136 which could be exercised only when routed through Article 226/227, thus recognising the very existence of the jurisdiction of the High Court which had always been there and could not be affected with regard to the revision in respect of a decision by a Tribunal even in respect of a legislation under Articles 323A and 323B. It is merely a clarification of the existence of the jurisdiction of the High Court under Article 226/227 which could never be affected by any legislation.

20. Thus, the contention of Mr. Kushwaha, learned counsel for the petitioner that the remedy before the Tribunal is an alternative remedy cannot be accepted so far as the original jurisdiction in respect of the matters covered under the said Act are concerned. The Jurisdiction of the High Court with regard to the original jurisdiction in regard to the matters covered under the said Act which will remain precluded by

reasons of Section 14 read with Section 28 of the said Act in the light of the ratio decided in the case of L. Chandra Kumar (supra), wherein it has been laid down that 'it will not be open for litigants to directly approach the High Court even in case where they questions the vires of statutory legislation (except as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.'

21. Thus, the exclusion of original jurisdiction in respect of matters covered under Section 14 of the Act is affirmed barring a litigant to approach the High Court under Article 226/227 with the specific exceptions ; viz. : (1) that an original proceedings can be brought to the High Court where the legislation creating the Tribunal is challenged. Two other exceptions to the scheme of the Act has also been contemplated in the said judgment, viz. : (i) that the decision of the Tribunal can be challenged under the revisional Jurisdiction of the High Court under Article 226/227 of the Constitution : (ii) the appeal to the Supreme Court under Article 136 can be invoked only after the decision of the Tribunal is routed through Article 226/227 of the concerned High Court.

22. In the circumstances, the contention that alternative remedy is not a bar in entertaining the writ jurisdiction is no more relevant. Therefore, it is not necessary to refer to the decisions cited at the Bar by Shri Kushwaha in that respect.

23. It is not a question of alternative remedy but it is a question of jurisdiction. In view of such exclusion, the High Court lacks jurisdiction to entertain the cause of action covered under the said Act in its original form. The present case does not fall within the scope or exception contemplated in the case of L. Chandra Kumar (supra). Inasmuch as the said Act creating the Tribunal has not been challenged in this petition. Therefore, the contention of Mr. Kushwaha with regard to alternative remedy cannot be acceded to.

24. In that view of the matter, though affidavits have been changed, this matter cannot be entertained by this Court on account of initial lack of jurisdiction. At the same time, in view of the ratio decided in the case of L. Chandra Kumar (supra), no person can claim a right to move original cause under Article 226 before this High Court since the jurisdiction of the Tribunal has been fully preserved as has

been held in the case of L. Chandra Kumar (supra).

25. In the result, the writ petition fails and is accordingly dismissed.

26. But the fact remains that the petitioner on account of certain advise had preferred to move this Court. The petitioner cannot be said to be guilty of lack of diligence or laches on his part since he had sought the opinion of legal expert who had advised him to approach this Court, therefore, he cannot be punished on account of such mistaken advise which might have been given by his lawyer who had reasonable apprehension that this matter would be entertained by this Court. Therefore, the petitioner would be at liberty to make an application before the concerned Administrative Tribunal and the limitation provided therefore shall be condoned provided the petitioner makes an application to that effect before the Tribunal giving the benefit of Section 14 of the Limitation Act despite whatever might be contained in Section 21 of the Administrative Tribunal Act, 1983 in view of peculiar facts and circumstances of the case, provided such an application together with an application for condonation of delay is filed before the concerned Tribunal within a period of two months from today.

27. Mr. Kushwaha submits that interim order granted by this Court in the present petition should continue till the petitioner files his application before the concerned Tribunal. Since this Court lacks initial jurisdiction, therefore, order granting interim order suffers from lack of jurisdiction and as such cannot be sustained. Since this writ petition is dismissed on account of lack of jurisdiction on the part of this Court, therefore, there is no jurisdiction vested on this Court to extend or grant any stay till such an application is filed before the Tribunal. It would be open to the petitioner to apply for stay before the Tribunal which is expected to consider such prayer in accordance with law.

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