

**Ashok Kumar Yadav Vs. State of Madhya Pradesh and ors.**

**Ashok Kumar Yadav Vs. State of Madhya Pradesh and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/504775](http://sooperkanoon.com/504775)

**Court :** Madhya Pradesh

**Decided On :** Jul-17-2003

**Reported in :** 2003(3)MPHT391

**Judge :** Dipak Misra and ;K.K. Lahoti, JJ.

**Acts :** [Madhya Pradesh Reorganisation Act, 2000](#); [Constitution of India](#) - Article 226

**Appeal No. :** Writ Petition No. 2897/2003

**Appellant :** Ashok Kumar Yadav

**Respondent :** State of Madhya Pradesh and ors.

**Advocate for Def. :** R.S. Jha, Dy. Advocate General

**Advocate for Pet/Ap. :** R.K. Gupta, Sr. Adv.

**Judgement :**

ORDER

1. When complex situations arise and emergencies and exigencies usher in, not only immediate diagnosis is required but a peremptory treatment becomes absolutely indispensable, in a way, irrefragably inevitable.

2. The factual matrix of the present case frescoes a picture which is not a welcome thing in the realm of litigation inasmuch as a welfare State has the bounden duty

and sacrosanct obligation to see that when a forum is created proper arrangements are made so that the litigants do not face difficulties. Similarly, it is imperative when a forum is abolished by law. In the case at hand, a Notification was issued by the Government of India on 17-4-2003 abolishing the Madhya Pradesh Administrative Tribunal with immediate effect. Thereafter the State Government issued an Ordinance on 12-5-2003. Clause 3 of the said Ordinance reads as under :--

'3. (1) Any plaint or other proceeding which was transferred by any Civil Court and is pending on the appointed day before the Tribunal shall stand transferred back to the same Civil Court from which it was transferred and in case such Court is not in existence then to the Court of competent jurisdiction in its place and such Court shall proceed to dispose off the same as if it were plaint under the Code of Civil Procedure, 1908 (No. 5 of 1908).

(2) Every proceeding which was transferred by the High Court to the Tribunal and is pending on the appointed day before the Tribunal shall stand transferred back to the High Court.

(3) Every proceeding of a case which was filed as an application in the Tribunal and is pending on the appointed day before the said Tribunal shall stand transferred to the High Court.

(4) Every proceeding relating to contempt, execution or review of final order or interim order pending before the Tribunal on the appointed day shall stand transferred to the High Court.

(5) The record of all cases/applications decided by the Tribunal upto appointed day shall stand transferred to the High Court and District Courts respectively.

3. As soon as possible after the transfer of applications or proceedings, under Section 3 an officer of State deputed for the purpose shall intimate the applicant and the respondents accordingly.'

On a reading of the provision it is plain as day that certain categories of cases are to be transferred to the High Court of Madhya Pradesh and certain type of cases

shall be transferred to the other forums so that the litigants do not remain in a state of 'Trishanku', as no body would like to stay, dwell or embedded in a state of this nature. But, there is a significance but. To elaborate : the petitioner had approached the State Administrative Tribunal by filing an original application under Section 19 of the Administrative Tribunals Act, 1985 (for brevity 'the Act') for grant of certain reliefs the action initiated by him was pending for adjudication.

3. Presently we may sit for a while on the time machine. After the State [Madhya Pradesh Reorganisation Act, 2000](#) came into being the State administrative Tribunal was abolished by the State Government, which was assailed before this Court and eventually this Court affirmed the action of the State Government by giving certain guidelines and directions, with which we are not concerned at present. Thereafter, the matter travelled to the Apex Court wherein the Apex Court has admitted the petition but has not granted any ad-interim stay. In the meantime, the directions given in the writ petition in which abolition of the Tribunal was assailed, to some extent were complied with and eventually requisite notification was issued. As a sequitur an ordinance has been issued for transfer of the cases to the High Court which were sent from the High Court as well as the original applications which had been filed before the Tribunal. The ordinance also stipulates that the civil suits transferred by the Civil Courts to the Tribunal would go back to the said forum. The transfer of cases to other forum is not in issue before us.

4. The controversy is whether the State Government can issue an ordinance of this nature only to transfer the cases without the infrastructure. That apart, the situation arose in this case inasmuch as the Tribunal was abolished by a notification dated 17-4-2003. Immediate steps were not taken to transfer the cases and make other necessary arrangements. The Ordinance has been issued on 12-5-2003. Though more than three score days have passed, the State Government has not made any arrangement. As there was an unacceptable slumber and unappreciable hibernation on the part of the State Government the petitioner was compelled to knock at the doors of this Court inasmuch as while his case was pending before the Tribunal an order was passed directing some recovery. As the petitioner could not go to the Tribunal because of abolition he was constrained to

move an application under Article 226 of the [Constitution of India](#). In such a situation this Court issued an 'ad-interim' writ on 22-5-2003 which was allowed to continue. Thereafter the learned Single Judge under the M.P. High Court Rules and orders referred the matter to be adjudicated by a Division Bench, as some arrangements were required to be done so that genuine grievance, unmitigated agony and intolerable anguish of the litigants are put to an end to. Accordingly, the learned Single Judge passed an order on 9-7-2003 directing appearance and issuance of notice to the Principal Secretary, Law Department; the Secretary, General Administrative Department, Bhopal; the Registrar General, High Court of Madhya Pradesh; and the Registrar, Madhya Pradesh Administrative Tribunal to explain the obtaining factual circumstances. In pursuance of the aforesaid order the matter has been placed before us.

5. An affidavit has been filed by the Principal Secretary, Government of Madhya Pradesh, Law and Legislative Affairs Department. An affidavit has also been filed by the Secretary, General Administration Department.

6. First we shall advert to the affidavit sworn to by the Secretary, General Administration Department wherein in Paragraph 10 it has been stated as under :--

'10. The State Government has issued orders regarding the attachment of the entire staff of the Tribunal to the High Court of Madhya Pradesh vide Government of Madhya Pradesh General Administration Department order No. F-A-4-8/2003 one (i), dated 15-7-2003, along with the transfer of Land, Buildings, Infrastructure, Paraphernalia viz., vehicles, furniture, records, machines etc. The present procedure of payment of salary and allowance to the staff shall continue till be absorption of their services in the High Court of Madhya Pradesh.'

7. The Principal Secretary, Law & Legislative Affairs Department, Govt. of M.P., in his affidavit duly sworn to, in Paragraph 11 has stated as under:--

'11. The State Government has issued orders regarding the attachment of the entire staff of the Tribunal to the High Court of Madhya Pradesh vide Government of Madhya Pradesh General Administration Department Order No. F-A-4-8/2003/one (i), dated 15-7-2003 along with the transfer of Land Building,

infrastructure, paraphernalia viz., vehicles, furniture, records, machines etc. The present procedure of payment of salary and allowance to the staff shall continue till the absorption of their services in the High Court of Madhya Pradesh.'

8. It is appropriate to note here that in course of hearing of this application, in this regard, we asked the Registrar General, High Court of Madhya Pradesh whether he had entered into any correspondence to which he replied that correspondence have been entered into and he also has received a memorandum with regard to financial sanction, issued by the General Administration Department, Govt. of M.P., indicating that sanction of the Finance Department is necessary. The Registrar General expressed apprehension in regard to the staff of the Tribunal and their attachment in the High Court and creation of the posts in the High Court. The Registrar General of the High Court expressed apprehension that transient move cannot be adopted and appropriate, sanguine and permanent steps should be taken to resolve the problem.

9. Mr. R.S. Jha, learned Deputy Advocate General for the State on the basis of the affidavit sworn to by the competent authorities and after obtaining instructions stated that the State Government is absolutely sanguine, to see that the litigants do not suffer and indubitably would take positive, concrete and sacrosanct steps within reasonable period so that difficulty is faced by the High Court.

10. Mr. R.K. Gupta, learned Senior Counsel appearing for the petitioner expressed apprehension that there might be delay in transfer of the cases from the Tribunal to this Court. At this juncture, the Registrar, State Administrative Tribunal, Jabalpur, has assured this Court that steps for transfer of cases shall be taken up within a fortnight hence. Keeping in view the aforesaid submissions of the Registrar General, High Court of Madhya Pradesh and the Registrar, Madhya Pradesh Administrative Tribunal, Jabalpur, and Mr. R.S. Jha, learned Deputy Advocate General for the State and the affidavits brought on record we are inclined to issue the following directions :--

(a) The cases pending before the Tribunal and its other Benches, namely, Bhopal, Indore and Gwalior, which are supposed to be transferred in accordance with the Ordinance, shall stand transferred to the respective Benches. It is further directed

that the cases which have been filed before the Tribunal for the year 2002-2003 shall be transferred within a week hence.

(b) As far as the cases filed at Raipur Bench which was the erstwhile Branch of Tribunal of the State of Madhya Pradesh shall be properly dealt with by the Principal Secretary, Law & Legislative Affairs Department, in accordance with law.

(c) As stated in the affidavit and conceded to by the learned Deputy Advocate General for the State staff working in the aforesaid Benches of the Tribunal shall be attached to the High Court Madhya Pradesh in its respective Benches and they shall be paid salary through the High Court, but the budgetary allocation shall be made on a different head from the General Administration Department.

(d) The above arrangement contained in Clause (c) shall remain in force till the posts qua these employees are created in the High Court and they are eventually absorbed in the High Court.

(e) After their absorption appropriate and concrete arrangement shall be made by the State in respect of their posts and they shall deem to be the employees of the High Court and would get salary from the High Court.

(f) As stated by Mr. Jha, learned Deputy Advocate General for the State after obtaining due instructions, that the State shall take prompt steps to comply with aforesaid arrangements. In view of the aforesaid concession of Mr. Jha, we are not inclined to pass any further order, but because of the piquant situation, we are only constrained to add that the aforesaid arrangements shall be made by end of November, 2003 positively without fail. It is hereby made clear, no application for extension for any purpose shall be entertained.

(g) All the buildings where the Benches of the Tribunal are functioning viz., Jabalpur, Gwalior and Indore excluding Bhopal shall be put at the disposal of the High Court. As accepted by the learned Deputy Advocate General for the State, after obtaining due instructions, the cases would be transferred within a fortnight. Thereafter the Registrar, Madhya Pradesh Administrative Tribunal shall handover the physical possession of the aforesaid buildings to the Registrar General, High

Court of Madhya Pradesh.

(h) It is hereby directed that the furnitures including vehicles and all other accessories shall also stand transferred to the Registrar General, High Court of Madhya Pradesh, who shall take possession thereof. In the meantime, the Registrar, Madhya Pradesh Administrative Tribunal, shall be deemed to be the custodian of the buildings and furniture.

11. To avoid any kind of confusion it is thought imperative to clarify that building, the staff, furniture, books, etc. of Gwalior Bench of the Tribunal shall stand transferred to the Gwalior Bench of the High Court and similarly, staff, building, infrastructures and paraphernalia etc. of the Bench at Indore shall stand transferred to the Indore Bench of the High Court. So far as the Jabalpur Bench of the Tribunal is concerned, the same will stand transferred to the main seat at Jabalpur.

12. As far as the present case is concerned, this Court had passed an interim order accepting that the petitioner could not move an application in original application before the Tribunal. Considering the factual scenario in entirety, an ad interim writ was issued and there was stay of the operation of the order.

Keeping in view the peculiar situation, we are only inclined to direct that the earlier order passed by this Court, shall remain in vogue for a period of two months from today. As the case shall be transferred to this Court within a month, it will be open to the petitioner to move a regular application for grant of stay in the concerned original application, which shall be properly dealt with by the appropriate Bench.

13. We have stipulated three months period for completing all the formalities. The Additional Registrar (Judicial) of the High Court of Madhya Pradesh, who is present in the Court, has stated in a most categorical manner, that the cases transferred from the Tribunal, shall be renumbered within a period of one month from the date of their receipt and shall be placed before the Bench in quite promptitude, if memorandum by the Counsel is filed.

14. After the cases are registered and new numbers are given, a copy thereof shall be handed over to the President, State Bar Association, Jabalpur. Similar arrangements shall be made as far as the Benches at Indore and Gwalior are concerned. Registrars of the respective Benches shall take due care in that regard.

15. Mr. T.S. Ruprah, the President, High Court Bar Association, Jabalpur, who is present in the Court, undertakes that he will obtain the list from the Additional Registrar (Judicial) and take steps for distributing the same amongst the members of the Bar.

16. While closing this matter, we have been addressed by Mr. V.V. Dubey, learned Counsel appearing on behalf of the District Bar Association, Bhopal, that the Tribunal should not have been closed as the matter is pending before the Apex Court. It is so submitted by him on the basis of an application for intervention filed by him. As the matter is pending before the Apex Court, we are not inclined to entertain this application at this juncture and the same is rejected.

17. The writ petition is accordingly disposed of. There shall be no order as to costs.

C.C. as per rules.