
(2005) 06 GAU CK 0006
In the Gauhati High Court
Case No : Writ Petition (C) No. 405 of 2004

Achinta Kumar Deb Barma

APPELLANT

Vs

State Bank of India, Agartala Bazar Branch

RESPONDENT

Date of Decision : 03-06-2005

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 141, 226, 227
Recovery of Debts Due to Banks and Financial Institutions Act, 1993 — Section 28, 5(6)

Citation : AIR 2005 Guw 161 : (2009) 1 GLR 597 : (2005) 3 GLT 110

Hon'ble Judges : R.B. Misra, J;A.B. Pal, J

Bench : Division Bench

Advocate : B. Das and N. Majumder, for the Appellant; S. Deb and S. Chowdhury, for the Respondent

Judgement

R.B. Misra, J.—Heard Mr. B. Das, learned senior counsel assisted by Mr. N. Majumder, learned Counsel for the petitioner. Also heard Mr. S. Deb, learned senior counsel assisted by Mr. S. Chowdhury, learned Counsel for the respondent.

2. The short question for consideration before this Court is as to whether the Division Bench or Single Bench of the High Court could hear the writ petition under Article 226/227 of the Constitution of India against the judgment and order passed by Debt Recovery Tribunal (in short "the Tribunal").

3. The above question has arisen for consideration in reference to an order dated 31-3-2004 passed by the Tribunal, Guwahati in Original Application No. 233 of 1997 where the petitioner was directed to pay an amount of Rs. 34,32,769,73 with interest to the respondent/State Bank of India, Agartala Bazar Branch, Agartala.

4. Mr. B. Das, learned senior counsel appearing on behalf of the petitioner while inviting our attention to a decision of this Court dated 6-12-2000 in W.P. (C) No. 527 of 2000 has submitted that Debt Recovery Tribunal is a "Tribunal" within the meaning of Article 323-B of the Constitution and, therefore, in view of the Order

dated 6-12-2000 of this Court as indicated above only Division Bench of the High Court could entertain the writ petition under Article 226/227 of the Constitution. To strengthen his contention Mr. Das, in reference to the decision of the Supreme Court passed in L. Chandra Kumar Vs. Union of India and others, „L. Chandra Kumar v. Union of India, paragraphs 92 and 99 has asserted that the Tribunal created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules and all decisions of the Tribunal be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction such Tribunal concerned falls. Being aggrieved by and dissatisfied with the decision and order of the Tribunal, party could move to the High Court under Article 226/227 of the Constitution and against the decision of Division Bench of the High Court aggrieved party could move before the Supreme Court under Article 136 of the Constitution by way of special leave petition. According to Mr. S. Deb, learned senior counsel appearing on behalf of the respondent, on the other hand, has submitted that the decision of the Supreme Court in L. Chandrakumar (supra) as referred and relied on by Mr. B. Das, has no application in the present case inasmuch as the Debt Recovery Tribunal is not a Tribunal within the meaning of Article 323-A or 323-B of the Constitution. According to Mr. Deb, the question whether a Debt Recovery Tribunal is one within the meaning of Article 323-B was examined by the Supreme Court in Union of India and Another Vs. Delhi High Court Bar Association and Others, wherein, correctness of the decision of Delhi High Court and Gauhati High Court also came for consideration and the Hon''ble Supreme Court has held that a Debt Recovery Tribunal is a creature of legislature under Entry 45 of List I of the VII Schedule of the Constitution and as such is not a "Tribunal" created within the meaning of Article 323B.

5. According to Mr. Deb, learned senior counsel for the respondent, the decision of the Tribunal in question does not fall within Article 323-B of the Constitution and therefore, shall be brought under scrutiny by a Single Judge of High Court in exercise of its power under Article 226/227 of the Constitution. Mr. Deb has further contended that the decision of this Court dated 6-12-2000 passed in W.P. (C) No. 527 of 2000 was without examining the issue in the above perspective and the said decision was passed without considering the question whether the Debt Recovery Tribunal was one within the meaning of Article 323-B or whether it was an independent legislation created by the legislature in exercise of the power under Entry 45 of List I of the VII Schedule of the Constitution.

6. When this issue arose before the Single Bench (Hon''ble A. B. Pal, J.) of this Court it was noted in the order dated 2-3-2005 by this Court that this Court (Hon''ble B.B. Deb, J.) in Para 4 of its earlier judgment dated 6-12-2000 has briefly discussed the reference of Articles 323-A and 323-B of the Constitution and had also referred briefly the decision of the Supreme Court in L. Chandra Kumar Vs. Union of India and others, before arriving at a finding that only a Division Bench of the High Court could hear a writ petition arising out of the judgment and order of Debt Recovery Tribunal. However, Mr. Deb, learned

Counsel had pointed out before the Single Bench of this Court (Hon''ble A.B. Pal, J.) that the said order dated 6-12-2000 (by Hon''ble B.B. Deb, J.) was passed when the decision of the Supreme Court in Union of India and Another Vs. Delhi High Court Bar Association and Others, was not available. In these circumstances the Single Bench of this Court (Hon''ble A.B. Pal, J.) one of us of this Division Bench thought that the question as indicated above has to be considered afresh in the changed circumstances.

7. In reference to the order dated 2-3-2005 of the Single Judge of this Court, the present Division Bench of High Court has been constituted to consider the question and issue as indicated above.

8. In reference for the submission made earlier, Mr. Das has reiterated that the Debt Recovery Tribunal is a Tribunal created under Article 323-B of the Constitution and in reference to Paragraphs 92 and 99 of the judgment of L. Chandra Kumar Vs. Union of India and others, only Division Bench of the High Court could hear a petition under Article 226/227 of the Constitution. For convenience Paragraphs 92 and 99 of the judgment of L. Chandrakumar (supra) are quoted as below :--

"92. We may add here that under the existing system, direct appeals have been provided from the decisions of all Tribunals to the Supreme Court under Article 136 of the Constitution. In view of our above-mentioned observation, this situation will also stand modified. In the view that we have taken, 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 Articles 226/227 of the Constitution and from the decision of the Division Bench of the High Court the aggrieved party could move this Court under Article 136 of the Constitution.

99. In view of the reasoning adopted by us, we hold that Clause 2 (d) of Article 323-A and Clause 3(d) of Article 323-B, 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 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a 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 323-A and Article 323-B 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 Tribunal concerned 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 overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

9. Part XIV-A of the Constitution deals with the Tribunals and the Constitution has provided Article 323A and 323 B as below :--

"323A. Administrative tribunals.-- (1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect of recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any Corporation owned or controlled by the Government.

(2) A law made under Clause (1) may,--

(a) to (c) *** **

(d) exclude the jurisdiction of all Courts, except the jurisdiction of the Supreme Court under Article 136, with respect of the disputes or complaints referred to in Clause (1);

323B. Tribunals for other matters.-- (1) The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes complaints, or offences with respect to all or any of the matters specified in Clause (2) with respect to which such Legislature has power to make laws.

(2) The matters referred to in Clause (1) are the following, namely :--

(a) & (i) *** **

(3) A law made under Clause (1) may

(a) to (c) *** **

(d) exclude the jurisdiction of all Courts, except the jurisdiction of the Supreme Court under Article 136, with respect to all or any of the matters falling within the jurisdiction of the said tribunals;

10. In reference to Article 246 of the Constitution dealing with the subject matter of laws made by Parliament and by the Legislatures of States the Entry 45 of List I of Seventh Schedule of the Constitution is the subject "Banking".

11. Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (hereinafter referred to as the Act, 1993) was challenged before the Supreme Court on the ground of unreasonableness and being violative of Article 14 of the Constitution and beyond legislative competence of Parliament. While considering the different sections of the "Act, 1993" and the Rules framed thereunder, the

Supreme Court has held that the Parliament has legislative competence to enact the "Act, 1993" and Law constituting the banking Tribunal which is not covered by Articles 323-A and 323-B of the Constitution and "Act, 1993", falls within Entry 45 of List I of Seventh Schedule as the Entry "Banking" indicated in Entry 45 would comprehend legislation in respect of matters ancillary or subsidiary thereto. Parliament alone can enact law in regard to conduct of banking business which includes recovery of banks' dues and for that purpose setting up adjudicatory body like the Banking Tribunal was legally valid. The Supreme Court in the case of Union of India and Another Vs. Delhi High Court Bar Association and Others, observed as under :--

"The power of Parliament to enact a law, which is not covered by an entry in List II and List III, is absolute. While Articles 323-A and 323-B specifically enable the legislatures to enact laws for the establishment of tribunals, in relation to the matters specified therein, the power of Parliament to enact a law constituting a Tribunal, like the Banking Tribunal, which is not covered by any of the matters specified in Article 323-A or 323-B, is not taken away. With regard to any of the entries specified in List I, the exclusive jurisdiction to make laws is with Parliament. The power conferred by Article 246(1) can be exercised notwithstanding the existence of Article 323-A or 323-B of the Constitution.

Articles 323-A and 323-B are enabling provisions which specifically enable the setting up of tribunals contemplated by the said articles. These articles, however, cannot be interpreted to mean that they prohibit the legislature from establishing tribunals not covered by these articles, as long as there is legislative competence under an appropriate entry in the Seventh Schedule. Articles 323-A and 323-B do not take away that legislative competence.

Entry 45 of List I would cover the types of legislation now enacted. Entry 45 of List I relates to "banking". Banking operations would, inter alia, include accepting of loans and deposits, granting of loans and recovery of debts due to the bank. There can be little doubt that under Entry 45 of List I, it is Parliament alone which can enact a law with regard to the conduct of business by the banks. Recovery of dues is an essential function of any banking institution. In exercise of its legislative power relating to banking, Parliament can provide the mechanism by which monies due to the banks and financial institutions can be recovered. The Tribunals have been set up in regard to (he debts due to the banks. The special machinery of a Tribunal which has been constituted as per the preamble of the Act, "for expeditious adjudication and recovery of debts due to banks and financial institutions and for matters connected therewith or incidental thereto" would squarely fall within the ambit of Entry 45 of List I. As none of the items in the lists are to be read in a narrow or restricted sense, the term "banking" in Entry 45 would mean legislation regarding all aspects of banking including ancillary or subsidiary matters relating to banking. Setting up of an adjudicatory body like the Banking Tribunal relating to transactions in which banks and financial institutions are concerned would clearly fall under Entry 45 of

List I giving Parliament specific power to legislate in relation thereto."

12. The Supreme Court in the case of Delhi High Court Bar Association (supra) also observed that :

"It has to be borne in mind that the decision of the Appellate Tribunal is not final, in the sense that the same can be subjected to judicial review by the High Court under Articles 226 and 227 of the Constitution."

13. However, as contended by Mr. Das, learned senior counsel for the petitioner that the decision of the Supreme Court in Union of India and Another Vs. Delhi High Court Bar Association and Others, is an obiter and not a good decision and needs interpretation, as the three Judges' decision of the Supreme Court in Delhi High Court Bar Association (supra) has ignored the ratio of seven Judges' decision of the Supreme Court in the case of L. Chandra Kumar Vs. Union of India and others, indicated in para 99 which has indicated that in respect of decision of all the Tribunals irrespective of whether such Tribunals were created under Article 323-A or 323-B, the petition before a Division Bench of High Court could be entertained. Many of the High Courts have power of original jurisdiction and in Delhi High Court could entertain a suit for recovery of money between Rs. 5 lakhs to Rs. 10 lakhs and below Rs. 5 lakhs before the subordinate Court whereas, the recovery of money exceeding Rs. 10 lakhs could be entertained by the Tribunal and a Debt Recovery Tribunal is a Tribunal of very high status in respect of dealing recovery of money thereafter, the observations made in para 99 of the Supreme Court in L. Chandrakumar (supra) indicate that against decision of such Tribunal the petition under Article 226/227 could be entertained by the Division Bench of the High Court only. However, in our consideration the above submission of Sri Das, learned Counsel for the petitioner is not tenable under law.

14. It is clear that Entry 45 of List of I of Seventh Schedule deals the "Banking" in reference to which the Parliament has duly brought in the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 which was held valid in view of the decision of the Supreme Court in Union of India and Another Vs. Delhi High Court Bar Association and Others, and the Parliament alone can enact law in regard to conduct of banking business which includes recovery of banks' dues and for that purpose Debts Recovery Tribunal has been constituted. Nowhere in Article 323-A and 323-B of the Constitution the Parliament or the Legislature has been provided to create any Tribunal on the subject of banking. When express provision has been laid down in the Constitution to deal with a particular subject and in exercise of the power in respect of specific entry the Parliament in its exercise of power under Entry 45 of List 1 of Seventh Schedule has created Debts Recovery Tribunal, the same cannot be said to have been at par with the "Tribunal" being created under Article 323-A or 323-B of the Constitution and the observations of the Hon'ble Supreme Court consisting of seven Judges made in L. Chandra Kumar Vs. Union of India and others, in paragraphs 92 and 99 are very clear. It leaves no doubt or any scope of any interpretation that against any

decision of any Tribunal having been created under Article 323-A or 323-B of the Constitution any petition could be entertained by the Division Bench of the High Court,

15. The decision of the Supreme Court in *L. Chandrakumar (supra)* is binding upon all Courts in reference to Article 141 of the Constitution. It is the ratio of the decision as indicated by the Hon'ble Supreme Court in the case of *L. Chandrakumar (supra)* which is binding and not finding of fact, it is the principle which is binding found out upon a reading of the judgment as a whole in the light of questions before the Court and not particular words or sentences in view of the decision of Supreme Court in *Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd.*, . It is only a matter of discipline for the High Courts in India but it is mandate of the Constitution as provided in Article 141 that the law declared by the Supreme Court shall be binding on all Courts within the territory of India in the light of *Suganthi Suresh Kumar Vs. Jagdeeshan*,

16. In view of the decision of the Supreme Court in India (*M/s. Indian Petrochemicals Corporation Ltd. and Another Vs. Shramik Sena*, in respect of interpretation of judgment of the Supreme Court, the High Court is bound to honour and interpret the Supreme Court judgment itself for applicability in a case. In view of the decision of the Supreme Court in *Director of Settlements, Andhra Pradesh and Others Vs. M.R. Apparao and Another*, it has been observed that it is the ratio decidendi of the decision and not any finding of fact which is the binding element in a decision. Similar view was taken in *Ram Prasad Sarma Vs. Mani Kumar Subba and Others*, where it was observed that it is the legal proposition flowing from the judgment which has binding effect. In view of the decision of the Supreme Court in *Smt. Kesar Devi Vs. Union of India (UOI) and Others*, , the Supreme Court has held that the judgment of a Court is not to be interpreted like a statute where every word is to be given a literal meaning and no word is to be ignored. Similar observations were also made subsequently in (*Ashwani Kumar Singh Vs. U.P. Public Service Commission and Others*, it was observed by the Supreme Court in respect of interpretation of a judgment that not only answer at the end of the judgment but the entire judgment as a whole has to be gone through to understand the true meaning of the judgment. In view of the decision made by the Supreme Court in (*Islamic Academy of Education and Another Vs. State of Karnataka and Others*, , in respect of interpretation of the judgment not only the answer at the end of the judgment but the entire judgment has to be gone through in order to understand the real effect of the judgment.

17. The decision of *Union of India and Another Vs. Delhi High Court Bar Association and Others*, as well as the observations of Supreme Court in *L. Chandra Kumar Vs. Union of India and others*, have to be understood in the light of above referred decisions and not the way Mr. Das asserts. Therefore, in our respectful consideration and in view of the above decisions specifically the verdict of the Supreme Court in *Delhi High Court Bar Association (supra)*, a Debt

Recovery Tribunal is a creation of Entry 45 of List I of Seventh Schedule of the Constitution and not a creation under Article 323-A or 323-B of the Constitution, the decision of Debt Recovery Tribunal including the decision dated 31-3-2004 of the Gauhati High Court passed in Case No. 223 of 1997 could be entertained by way of writ petition under Article 226/227 of the Constitution and the same could be adjudicated by the single Judge of the High Court only.

18. In view of the above observations the question for consideration in the present writ petition is dealt with and answered accordingly.