
(1978) 12 AHC CK 0058
In the Allahabad High Court
Case No : Writ Petition No. 4255 of 1978

Bharat Ram Gupta

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-12-1978

Acts Referred:

Constitution of India, 1950 — Article 136, 254, 323A, 371D, 46
Uttar Pradesh Public Services (Tribunal) Act, 1976 — Section 1(2), 2, 46, 57, 5B

Citation : (1979) AWC 137

Hon'ble Judges : R.R. Rastogi, J;N.D. Ojha, J

Bench : Division Bench

Advocate : Sidheshwari Prasad, for the Appellant;

Final Decision : Dismissed

Judgement

N.D. Ojha and R.R. Rastogi, JJ.—The Petitioner is a public servant as defined in Section 2(b) of the Uttar Pradesh Public Services (Tribunals) Act, 1976 (hereinafter referred to as the Act). Against the order of his reversion he made a claim before the State Public Services Tribunal. He also made an application for staying the operation of the order of reversion. This application was dismissed by the Tribunal on 31st March, 1978, on the ground that in view of Section 5-B of the aforesaid Act it was not open to it to stay the operation of the order of reversion. Aggrieved by this order the Petitioner has instituted the present writ petition.

2. The only point which has been urged by counsel for the Petitioner is that Section 5-B, on account of which the Tribunal felt helpless to pass the order of stay, was ultra vires the legislative competence of the State legislature.

3. Having heard counsel for the Petitioner and the Standing Counsel for the Respondents we, however, find ourselves unable to agree with this submission. Section 5-B was inserted in the Act by the Uttar Pradesh Public Services (Tribunals) (Amendment) Act, 1976 (U.P. Act No. 1 of 1977). This Act received

the assent of the President on January 10, 1977, and was published in the U.P. Gazette Extraordinary dated January 15, 1977. Reliance by counsel for the Petitioner was placed on Article 323A of the Constitution inserted by Section 46 of the Constitution (42nd Amendment) Act, 1976. By notification No. G.S.R. 2(E) dated 3rd January, 1977, published in the Gazette of India (Extraordinary), Part III, on the same date, the 3rd day of January, 1977, was appointed as the date on which Section 46 of the Constitution (42nd Amendment) Act, 1976, was to come into force. This notification was issued in exercise of the powers conferred by Sub-section (2) of Section 1 of the Constitution (42nd Amendment) Act, 1976. It was urged by counsel for the Petitioner that in view of Article 323A inserted by Section 46 as aforesaid, which came into force on 3rd January, 1977, the State legislature ceased to be competent after the said date to enact any law in regard to administrative tribunals. According to counsel for the Petitioner in inserting Article 323A in the Constitution it was clearly intended to cover the whole field in regard to administrative tribunals and consequently the State legislature in exercise of the powers conferred on it by Entry 41 (State Public Services, State Public Service Commission) of List II of the 7th Schedule to the Constitution ceased to be competent to enact any law in regard to Administrative Tribunals. Article 323A reads:

323A. Administrative Tribunals.- (1) Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to 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) provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

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

(e) provide for the transfer to each such administrative tribunal of any cases pending before any court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the causes of action on which such suits or proceedings are based had arisen after such establishment;

(f) repeal or amend any order made by the President under Clause (3) of Article 371D;

(g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(3) The provisions of this Article shall have effect notwithstanding anything in any other provisions of this Constitution or in any other law for the time being in force.

4. Emphasis was particularly placed on Clause (3) of the aforesaid Article. It was urged that Section 5-B as inserted in the Act after 3rd January, 1977, was repugnant to the provisions contained in Article 323A. Counsel for the Petitioner in this connection placed reliance on paragraph 27 of the decision of the Supreme Court in *Ch. Tika Ramji and Others etc. Vs. The State of Uttar Pradesh and Others*, . This paragraph reads as follows:

Nicholas in his *Australian Constitution*, 2nd Ed., p. 303, refers to three tests of inconsistency or repugnancy:

(1) There may be inconsistency in the actual terms of the competing statutes (*R.V. Brishbane Licensing Court* (1920) 28 CLR 23.

(2) Though there may be no direct conflict, a State law may be inoperative because the Commonwealth law, or the award of the Commonwealth Court, is intended to be a complete exhaustive Code (*Clyde Engineering Co. Ltd. v. Cowburn* (1926) 37 CLR 466.

(3) Even in the absence of intention, a conflict may arise when both State and Commonwealth seek to exercise their powers over the same subject-matter (*Victoria v. Commonwealth* (1937) 58 CLR 618 (N); *Wenn v. Attorney-General (Vict.)* (1948) 77 CLR 84.

On a perusal of Article 323A, however, we are not inclined to accept the submission made by counsel for the Petitioner that the intention of the Parliament in inserting Article 323A was to take away the legislative competence of the State legislature of enacting law in regard to administrative tribunals under Entry 41 aforesaid and to confer the said power exclusively on the Parliament. On a plain reading of Article 323A it is apparent that power has been conferred on Parliament also by the said Article entitling it by law to provide for the adjudication or trial by the administrative tribunals of disputes or complaints referred to therein. The use of the word "may" after the word "Parliament" and before the words "by law" is significant. We are aware that "may" can in certain circumstances be also read as "shall", but in the context in which the said word has been used in Article 323A we find no justification to read the word "may" as "shall". The intention in enacting Article 323A seems to us to be that in case the Parliament in exercise of the power conferred on it by the said Article chooses to

make a law as contemplated by the said Article, the provisions contained in Article 254 of the Constitution will be attracted. The view which we take finds support from the circumstance that even though by Section 57 of the Constitution (42nd Amendment) Act, 1976, certain new Entries were inserted in the various lists of the 7th Schedule to the Constitution and certain amendments were also made therein, but no entry in List I conferring exclusive power on the Parliament to make laws in regard to the administrative tribunals was inserted. This indicates that it was not the intention of the Parliament to cover the whole field in regard to the Administrative Tribunals. Under Article 323A of the Constitution there is no obligation on the Parliament to make a law in regard to administrative tribunals. If the submission made by counsel for the Petitioner is accepted the State legislature would cease to be competent to enact laws in regard to the administrative tribunals inspite of entry 41 of List II of the 7th Schedule to the Constitution being allowed to remain intact by the Constitution (42nd Amendment) Act, 1976, even if the Parliament does not choose to make any law in exercise of the power conferred on it by Article 323A. There is nothing in Article 323A including its Clause (3) referred to above which may have the effect of repealing the parent Act enacted by the State legislature. So it continues to be in force. As already seen Parliament is not bound to pass an Act on the subject. Suppose some lacuna is pointed out and it becomes necessary to amend the parent Act but the Union Government is for some reason not inclined to introduce the necessary legislation in Parliament, it would create a stalemate if the interpretation placed by counsel for the Petitioner on Article 323A is accepted. This does not seem to be the intention of the Parliament in inserting Article 323A in the Constitution and an interpretation which is likely to create such an anomalous situation and render an enactment validly passed by the State legislature and still in force unworkable cannot be accepted. The only reasonable interpretation of Article 323A including its Clause (3), in our opinion, seems to be that if Parliament chooses to enact a law on the subject the provisions of Article 254 of the Constitution, as already pointed out above, will be attracted. U.P. Act No. 1 of 1977, by which Section 5-B was inserted in the Act, as already seen above, was assented to by the President on January 10, 1977. We are consequently unable to take the view that Section 5-B of the Act is ultra vires the powers of the State legislature.

5. In the result the writ petition fails and is dismissed but there will be no order as to costs.