
(2009) 07 AHC CK 0258
In the Allahabad High Court

Bhaskar Mishra

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 03-07-2009

Acts Referred:

Constitution of India, 1950 — Article 12, 136, 14, 15, 226

Citation : (2009) 07 AHC CK 0258

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Shukla, J.—Kendriya Vidyalaya Sangathan is an autonomous body registered under the Societies Registration Act, 1860, and is fully controlled financially and administratively by Government of India, Ministry of Human Resources and Development, New Delhi. Primary aim of the Sangathan is to provide, establish, endow, maintain, control and manage the Central Schools (Kendriya Vidyalaya) located all over India and abroad. Said Sangathan has three tier management structure for its smooth functioning; (1) Head Quarter; (ii) Regional Offices; and (iii) Kendriya Vidyalaya spread all over the country and abroad, each having their Vidyalaya Management Committee. General Body is the Apex Body and the Minister of Human Resources and Development is the incharge and Chairman of Kendriya Vidyalaya Sangathan. Sometimes in fourth quarter of the year 2007, an advertisement was issued in various news papers, including Employment News dated 12-18 November, 2007 thereby notifying vacancies for the year 2007-08 and 2008-09 of Post Graduate Teachers in various subjects. Pursuant to said advertisement, the petitioner also applied for consideration of his candidature and was called for interview. Thereafter select list had been published and therein the name of the petitioner did not figure. Petitioner submits that under Right to Information Act information was furnished to him that he had not studied subject of Commerce with accounting/cost accounting/financial accounting as the main subjects and had studied management accounting, and so his candidature has not been found eligible for the post of Postgraduate

teacher (Commerce) at Kendriya Vidyalaya Sangathan. At this juncture, present writ petition has been filed with following reliefs:

i) suitable writ, order or direction in the nature of mandamus commanding the respondents to include name of the petitioner in the select list as admittedly he has obtained 90 marks in the written examination over and above the last selected candidate with 88 written marks in pursuance to the Advertisement dated 12-18 November, 2007 (Annexure-1)

ii) a suitable writ, order or direction in the nature of mandamus commanding Kendriya Vidyalaya Sangathan to treat the petitioner eligible and after adding marks of writ examination and interview he be included in the select list according to his merit in pursuance to advertisement dated 15-21 November, 2008 (Annexure-6)

iii) a suitable writ, order or direction in the nature of mandamus of declaration declaring the degree of M.Com. issued from Allahabad University with management accounting as one of the main subjects to be considered as eligible qualification in terms of advertisement and the qualification specified and prescribed because that fully satisfies the M.Com. degree with accountancy.

Alternatively

iv) a writ, order or direction in the nature of declaration that in case the degree in Commerce with accountancy/cost accountancy/financial accountancy does not include management accountancy then the word accountancy/cost accountancy be struck down and only Post Graduate degree in commanding be declared/treated as eligible qualification.

v) a suitable writ, order or direction in the nature of declaration declaring Act No. 19 of 1986 inserted with effect from 22.01.1986 in Section 14(1)(b) III in its proviso and Section 14(1)(c) and 14(2) in so far as it includes word "Society" besides any corporation as ultra vires Article 323A of the Constitution of India read with Articles 14 and 15 of the Constitution of India as well as ultra vires Central Scheme and Object of the Administrative Tribunal Act 1985."

vi) a suitable writ, order or direction in the nature of certiorari quashing notification dated 17.12.1998 issued by the Central Government under Sub-section (2) of Section 14 of the Central Administrative Tribunal's Act 1985 by which the Central Government has notified that the said act shall apply to Kendriya Sangathan which is include at item No. 34 of the said notification being hit by excessive delegation of legislative function inasmuch by executive notification and without any amendment in the Central Administrative Tribunal's Act, 1985 and Article 323 A has been sought to be extended by executive action of the Central Government as it is well settled that executive action cannot be abdicate and exercise power already vested in the legislation and it cannot amend any Act by executive notification.

iii) Any other suitable writ, order or direction as it may deem fit and proper in the

circumstances of the case.

iv) award cost of this petition to the petitioner.

2. On presentation of writ petition, preliminary objection has been raised to the effect that the present writ petition is not at all liable to be entertained by this Court and petitioner be relegated to Central Administrative Tribunal, as Kendriya Vidyalaya Sangathan has been included at item No. 34 of the Notification dated 17.12.1998 issued by Central Government in exercise of its authority under Sub-section (2) of Section 14 of the Central Administrative Tribunal Act, 1985, and in this background as well as in view of judgment of Hon'ble Apex Court in Kendriya Vidyalaya Sangathan and Anr. v. Subhash Sharma : AIR 2002 SC 1295, writ petition is liable to be dismissed on the ground of alternative remedy.

3. Sri A.N. Tripathi, Senior Advocate, assisted by Sri A.K. Mishra and Sri R.P. Mishra, Advocates, countered the said submission with regard to preliminary objection by contending that in the present case validity of Notification dated 17.12.1998 itself is subject matter of challenge, which has been issued in exercise of authority under Sub-section (2) of Section 14 of the Central Administrative Tribunal Act, including Kendriya Vidyalaya Sangathan at Item No. 34, whereas under Article 323A of the Constitution, "societies" have not been included, as such addition or inclusion in the Schedule at item No. 34 of the Kendriya Vidyalaya Sangathan is ultra vires Article 323A of the Constitution and the same is also hit by excessive delegation of powers, as without amending Article 323A by introducing therein the word "society", inclusion of word "society" u/s 14 (2) of Central Administrative Act cannot be subscribed and no such notification could have been issued, and once said provision itself is ultra vires, then writ petition, in all eventuality, is liable to be entertained and the reliefs prayed for are liable to be accorded on merits.

4. Countering the said submissions, Sri S. K. Mishra, Advocate, appearing for Union of India, on the other hand, contended that Kendriya Vidyalaya Sangathan is a society registered under Societies Registration Act, 1860, as such it clearly falls within the definition of the term "other authority", and as such the Central Government had full authority to issue Notification in exercise of its authority u/s 14 (2) of the Central Administrative Tribunal Act, 1985. In this background, Central Government has full legislative competence to issue such notification, as has been done, and writ petition is nothing but a pretence to overcome and overreach the dictum of Apex Court in the case of Kendriya Vidyalaya Sangathan and Anr. v. Subhash Sharma : AIR 2002 SC 1295, as such writ petition is liable to be dismissed on the ground of alternative remedy, and petitioner is liable to be relegated to the forum of Central Administrative Tribunal.

5. After respective arguments have been advanced, statutory provisions relevant to the instant case are being looked into. Part XIV-A of the Constitution was inserted through Section 46 of the Constitution (42nd Amendment) Act, 1976 with effect from 01.03.1977. It comprised of two provisions; Article 323A and

323B. For the sake of convenience, the relevant provision of Article 323A, relevant for the purposes of present case, is being quoted below:

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 provision 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 provision of this Constitution or in any other law for the time being in force.

6. In pursuance of the power conferred upon it by Clause (1) of Article 323A of Constitution, Parliament enacted the Administrative Tribunals Act, 1985 (Act 13 of 1985) (hereinafter referred to as "the Act"). The Statement of Objects and Reasons of the Act indicates that it was in the express terms of Article 323A of the Constitution and was being enacted because a large number of cases relating to service matters were pending before various Courts; it was expected that "the setting up of such Administrative Tribunals to deal exclusively with service

matters would go a long way in not only reducing the burden of the various courts and thereby giving them more time to deal with other cases expeditiously but would also provide to the persons covered by the Administrative Tribunals speedy relief in respect of their grievances.

7. Chapter I of Central Administrative Tribunal Act, 1985 deals with extension of jurisdiction of the Administrative Tribunal and Section 2 thereof deals with the provisions of the said Act not applicable to category of employees as has been provided therein. Section 3 deals with the definition clause and Chapter II deals with the establishment of Tribunals.

8. Chapter II ("Establishment of Tribunals and Benches thereof") contains Sections 4 to 13. Section 4 empowers the Central Government to establish: (1) a Central Administrative Tribunal with Benches at separate places; (2) An Administrative Tribunal for a State which makes a request in this behalf; and (3) a Joint Administrative Tribunal for two or more States which enter into an agreement for the purpose. Section 5 states that each Tribunal shall consist of a Chairman and such number of Vice-Chairman and Judicial and Administrative Members as may be deemed necessary by the appropriate Government. Sub-section (2) of Section 5 requires every Bench to ordinarily consist of one Judicial Member and one Administrative Member. Sub-section (6) of Section 5, which enables the Tribunal to function through Single Member Benches.

9. Sub-sections (4), (5) and (6) of Section 6 provide that all the Members of the Central Administrative Tribunal, the State Administrative Tribunals and the Joint Administrative Tribunals shall be appointed by the President; in the case of the State Administrative Tribunals and the Joint Administrative Tribunals, the President is required to consult the concerned Governor(s). Sub-section (7) stipulates that the Chief Justice of India is also to be consulted in the appointment of the Chairman, Vice-chairman and Members of all Tribunals under the Act. Section 8 prescribes the terms of office of the personnel of the Tribunal as being for a duration of five years from the date of entering into office; there is also provision for reappointment for another term of five years. The maximum age limit permissible for the Chairman and the Vice-Chairman is 65 years and for that of any other Member is 62 years. Section 10 stipulates that the salaries, terms and conditions of all Members of the Tribunal are to be determined by the Central Government; such terms are, however, not to be varied to the disadvantage of any Member after his appointment. Chapter III ("Jurisdiction, powers and authority of tribunals") consists of Sections 14 to 18. Section 14, 15 and 16 deal with the jurisdiction, powers and authority of the Central Administrative Tribunal, the State Administrative Tribunals and the Joint Administrative Tribunals respectively. These provisions make it clear that except for the jurisdiction of this Court, the Tribunals under the Act will possess the jurisdiction and powers of every other Court in the country in respect of all service-related matters. Section 17 provides that the Tribunals under the Act will have the same powers in respect of contempt as are enjoyed by the High Courts.

Section 14 of the Central Administrative Tribunal Act being relevant is being excerpted below:

14. Jurisdiction, powers and authority of the Central Administrative Tribunal. -
(1) Save as otherwise expressly provided in this Act, the the Central Administrative Tribunal shall exercise, on and 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-

(a) recruitment and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;

(b) all service matters concerning-

(i) a member of any All-India Service; or

(ii) a person not being member an All-India Service or a person referred to in Clause (c) appointed to any civil service of the Union or a civil post under the Union; or

(iii) a civilian not being member an All-India Service or a person referred to in Clause (c) appointed to any defence services or a post connected with defence,

and pertaining to the service of such member, person or civilian , 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 or society owned or controlled by the Government.

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-Clause (ii) or Sub-clause (iii) of Clause (b), being a person whose services have been placed by a State Government or any local or authority or any corporation or society or other body, at the disposal of the Central Government for such appointment.

Explanation.- For the removal of doubts, it is hereby declared that references to "Union" in this Sub-section shall be construed as including references also to a Union territory.

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of Sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporation or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government:

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different

dates may be so specified under this Sub-section in respect of different classes of, or different categories under any class of, local or other authorities or corporations or societies.

(3) Save as otherwise expressly provided in this Act, the the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this Sub-section shall apply to any local or other authority or corporation or society, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court) in relation to-

(a) recruitment and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society; and

(b) all service matters concerning a person other than a person referred to in Clause (a) or Clause (b) of Sub-section (1) appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs.

Based on the provisions which have been noted and quoted above, Central Government, in relation to Kendriya Vidyalaya Sangathan, which is a society registered under Societies Registration Act, 1860, controlled by the Government of India, has issued Notification dated 17.12.1998 under Sub-section (2) of Section 14, specifying that the Act would apply to the Organizations mentioned in Schedule to the Notification and Kendriya Vidyalaya Sangathan was also included in the said Schedule at item No. 34. At the said point of time when Kendriya Vidyalaya Sangathan was notified and included in the Notification at item No. 34, by the Central Government by exercising authority u/s 14 (2) of the Central Administrative Tribunal Act, 1985, attempt was made to challenge the dispute in respect of service of the employees of Kendriya Vidyalaya Sangathan before respective High Court and writ petition was entertained, and the matter ultimately travelled up to Hon'ble Apex Court in the case of Kendriya Vidyalaya Sangathan and Ors. v. Dr. R.D. Vishwakarma and Ors. : AIR 2002 SC 1295, decided on 07.03.2002 and therein view was taken that writ petition could not have been entertained concerning service matter of the employees of Kendriya Vidyalaya Sangathan, as this matter comes under the jurisdiction of Central Administrative Tribunal and the High Court committed error by declining to transfer the writ petition to Central Administrative Tribunal. Relevant extract of the said judgment is being extracted below:

10. The Kendriya Vidyalaya is an autonomous body registered under the Societies Registration Act and controlled by the Government of India and that being the position the Administrative Tribunal has jurisdiction concerning service matters of the employees of the Kendriya Vidyalaya in view of Sub-clause (iii) of S. 14(1)(b). In this connection, the learned Additional Solicitor General has also

drawn our attention to the Notification of the Government of India dated 17th December, 1998 issued under Sub-section (2) of S. 14 of the Act by which the Central Government specified that the Act shall apply to the organisations mentioned in the schedule to the Notification and the Kendriya Vidyalaya has also been included in the said Notification at Item No. 34. Therefore, Mr. Ahmed has rightly submitted that the service dispute concerning the employees of the Kendriya Vidyalaya would come under the jurisdiction of the Central Administrative Tribunal. It does not make any difference that the institution is located in Jammu and Kashmir and the respondent is working there.

11. To appreciate the second submission of Mr. Ahmed we extract below relevant portions from paragraphs 93 and 99 of the decision of the Constitution Bench of this Court in *L. Chandra Kumar Vs. Union of India and others*,

(93) ...We may add that the Tribunals 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 cases 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 Tribunal concerned.

(99) ...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.

12. The Constitution Bench of this Court has clearly held that Tribunals set up under the Act shall continue to act as the only Courts of first instance "in respect of areas of law for which they have been constituted." It was further held that it will not be open for litigants to directly approach the High Court even in cases where they question the vires of statutory legislation (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.

13. In view of the clear pronouncement of this Court, the High Court erred in law in directly entertaining the writ petitions concerning service matters of the employees of the Kendriya Vidyalaya as these matters come under the jurisdiction of the Administrative Tribunal. We, therefore, hold that the High Court committed an error by declining to transfer the writ petition to the Central Administrative Tribunal. Consequently, we set aside the impugned orders and direct the High Court to transfer both the writ petitions to the Central Administrative Tribunal, Chandigarh Bench which may, in its turn, make over the case to the circuit Bench in the State of Jammu and Kashmir for disposal in accordance with law.

10. Said judgment has been holding the field and now challenge has been made before this Court by contending therein that under Article 323A of the Constitution, once society in question has not at all been provided for under the constitutional scheme of things, then qua service matters of the employees of the society, Central Government was not at all competent to issue Notification u/s 14 (2) of the Central Administrative Tribunal Act, 1985, and same is case of excessive delegation of power, and this challenge has been made taking cue from paragraphs 78, 93 and 99 of the judgment in the case of L. Chandra Kumar Vs. Union of India and others, wherein view has been taken that power of High Court and Supreme Court to test the constitutional validity of legislation can never be excluded or ousted.

11. The question is as to when the word "society" has not been mentioned under Article 323A of the Constitution, then in this background, is Central Government empowered to issue Notification u/s 14 (2) of the Central Administrative Tribunal Act to the effect that service dispute of the employees of Kendriya Vidyalaya Sangathan, which is society registered under Societies Registration Act, 1860, is triable by the Central Administrative Tribunal Act, 1985. A bare perusal of the provisions as contained under Article 323A of the Constitution of India would go to show that Parliament has been vested with the authority to make law to constitute Tribunal for settlement 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. "Society" has not been mentioned therein i.e. under Article 323A, and on this premises, it has been sought to be contended that Section 14 of the Central Administrative Tribunal Act, 1985 owes its origin to Article 323A of the Constitution and once societies are not contemplated therein, then same cannot be brought within the ambit of the Act by Notification of the Central Government. Hon'ble Apex Court in the case of Rameshwar Prasad and Others Vs. Union of India (UOI) and Another, approved the principle of interpreting Constitution qua purposive interpretation of the Constitution, which provided for as follows:

The task of expounding constitution is crucially different from that of construing a Statute. A Statute defines present right and obligations. It is easily enacted and easily repealed. A constitution, by contrast, is drafted with an eye to the future. Its function is to provide a continuing framework for the legitimate exercise of governmental power, when joined by Bill or Charter of rights, for the unremitting protection of individual rights and liberties. Once enacted its provision cannot be easily repealed or amended. It must, therefore, be capable of growth and development over time to meet new social, political and historical realities often unimagined by its framer. The judiciary is the guardian of Constitution and must, in interpreting its provisions, bear these considerations in mind.

12. It is true that the word "society" has not been mentioned therein, but this is

equally true that while proceeding to construe the provisions of the Constitution, the courts must not invalidate a statute lightly, for invalidation of a statute made by the legislature elected by people is a grave step. The Legislature must be given freedom to do experimentations in exercising its powers, provided of course it does not clearly and flagrantly violate its constitutional limits. An Act of the Legislature can be declared invalid if it clearly violates some provisions of the Constitution. The Court before declaring the statute to be unconstitutional must be absolutely sure that there can be no manner of doubt that it violates a provision of the Constitution. If two views are possible, one making the statute consequential and the other making it unconstitutional, the former view must always be preferred. The Court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope. Said view has been taken by Hon''ble Apex Court in the case of *Government of Andhra Pradesh v. P. Laxmi Devi* AIR 2008 SCQ 1826. Paragraphs 44, 58, 64 and 65 of the said judgment are being quoted below:

44. In our opinion, there is one and only one ground for declaring an Act of the legislature (or a provision in the Act) to be invalid, and that is if it clearly violates some provision of the Constitution in so evident a manner as to leave no manner of doubt. This violation can, of course, be in different ways, e.g. if a State legislature makes a law which only the Parliament can make under List I to the Seventh Schedule, in which case it will violate Article 246(1) of the Constitution, or the law violates some specific provision of the Constitution (other than the directive principles). But before declaring the statute to be unconstitutional, the Court must be absolutely sure that there can be no manner of doubt that it violates a provision of the Constitution. If two views are possible, one making the statute constitutional and the other making it unconstitutional, the former view must always be preferred. Also, the Court must make every effort to uphold the constitutional validity of a statute, even if that requires giving a strained construction or narrowing down its scope vide *Rt. Rev. Msgr. Mark Netto Vs. State of Kerala and Others*, Also, it is none of the concern of the Court whether the legislation in its opinion is wise or unwise."

"58. The U.S. Supreme Court enunciated the principle that there is a presumption in favour of the constitutionality of Statute, and the burden is always upon the person who attacks it to show that there has been a clear transgression of a constitutional provision. This view was adopted by the Constitution Bench of this Court in *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*, which observed :

Prima facie, the argument appears to be a plausible one, but it requires a careful examination, and while examining it, two principles have to be borne in mind : (1) that a law may be constitutional even though it relates to a single individual, in those cases where on account of some special circumstances or reasons applicable to him and not applicable to others, that single individual may be

treated as a class by himself; (2) that it is the accepted doctrine of the American Courts, which I consider to be well-founded on principle, that the presumption is always in favour of the constitutionality of an enactment, and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. A clear enunciation of this latter doctrine is to be found in *Middleton v. Texas Power and L. Company* 248 U.S. 152 and 157, in which the relevant passage runs as follows :

It must be presumed that a legislature understands and correctly appreciates the need of its own people, that its laws are directed to problems made manifest by expression and that its discriminations are based upon adequate grounds.

and this view has been consistently followed thereafter.

64. Hence if two views are possible, one making the provision in the statute constitutional, and the other making it unconstitutional, the former should be preferred vide *Kedar Nath Singh Vs. State of Bihar*, Also, if it is necessary to uphold the constitutionality of a statute to construe its general words narrowly or widely, the Court should do so vide G.P. Singh's "Principles of Statutory Interpretation, 9th Edition, 2004 page 497". Thus the word "Property" in the Hindu Women's Right to Property Act, 1937 was construed by the Federal Court in *In re AIR 1941 72* (Federal Court) to mean "property other than agricultural land", otherwise the Act would have become unconstitutional.

65. The Court must, therefore, make every effort to uphold the constitutional validity of a Statute, even if that requires giving the statutory provision a strained meaning, or narrower or wider meaning, than what appears on the face of it. It is only when all efforts to do so fail should the Court declare a statute to be unconstitutional.

D. Some difficulties in the practical application of Thayer's Doctrine: After laying down the above broad principles in relation to the Thayer doctrine of Judicial Review of Statutes (which we respectfully agree with) we may now consider some practical difficulties which arise in this connection.

13. Keeping all these parameters in mind, now the contentions raised by the petitioner is being considered. It is true that under Article 323A of the Constitution, the word "society" has not been mentioned, whereas word "corporation" has been mentioned, and it is also equally true that Part XIV-A of the Constitution of India, which deals with Article 323A, the words "other authority" have been included. u/s 14 (2) of the Central Administrative Tribunal Act, Central Government has been vested with the authority to apply the provisions of Central Administrative Tribunal Act to local or other authorities within the territory of India or under the control of Government of India and to Corporations or societies owned or controlled by Government. The question is as to whether "other authority" used in Article 323A of the Constitution can bring within its scope and ambit the "societies" also which are owned and controlled by Government. Hon"ble Apex Court in the case of *Pradeep Kumar Biswas and Ors.*

v. Indian Institute of Chemical Biology and Ors. 2002 (2) UPLBEC 1798, while considering the provisions Article 12 of the Constitution of India and Section 14 of the Central Administrative Tribunal Act, 1985 vis-a-vis Council of Scientific Industrial Research, a society registered under Societies Registration Act, 1860 has answered this question by taking the view that concept of instrumentality or agency of the Government is not limited to "corporation" created by statute but is equally applicable to "company" or "society" and in a given case it would have to be decided on a consideration of the relevant factors whether the "company", or "society" is an instrumentality of the Government so as to come within the meaning of expression "other authority" in Article 12". It has been held therein that if the body is financially, functionally and administratively dominated by or under the control of Government and such control is pervasive, then the body is State and will fall within the definition of "other authority" and also within the scope of Article 12 of the Constitution. In the said case therefore, CSIR, which was a society registered under the Societies Registration Act, 1860, has been held to be "other authority" and falling within the scope of Article 12 of the Constitution, and in terms of Section 14 of Administrative Tribunal Act has been relegated to Central Administrative Tribunal. In paragraphs 22, 40, 64 and 65 of the judgment, it has been held as follows:

22. From this perspective, the logical sequitur is that it really does not matter what guise the State adopts for this purpose, whether by a corporation established by statute or incorporated under a law such as the Companies Act or formed under the Societies Registration Act 1860. Neither the form the corporation, nor its ostensible autonomy would take away from its character as "State" and its constitutional accountability under Part-III vis-a-vis the individual if it were in fact acting as an instrumentality or agency of Government.

40. The picture that ultimately emerges is that the test formulated in *Ajay Hasid* are not a rigid set of principles so that if a body falls within any one of them it must ex-hypothesis be considered to be a State within the meaning of Article 12. The question in each case would be-whether in the light of the cumulative facts as established, the body is financially, functionally and administrative dominated by a or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State.

64. We cannot accept this. Reading Article 323(A) of the Constitution and Section 14 of the 1985 Act it is clear that no notification u/s 14 (2) of the Administrative Tribunals Act could have been issued by the Central Government unless the employees of the CSIR were either 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. Once such a notification has been issued in respect of CSIR, the consequence will be that an

application would lie at the instance of the appellants at least before the Administrative Tribunal. No new jurisdiction was created in the Administrative Tribunal. The notification which was issued by the Central Government merely served to shift the service disputes of the employees of CSIR from the constitutional jurisdiction of the High Court under Article 226 to the Administrative Tribunals on the factual basis that CSIR was amenable to the writ jurisdiction as a State or other authority under Article 12 of the Constitution. Therefore, the notification issued in 1986 by the Central Government under Article 14 (2) of the Administrative Tribunals Act, 1985 serves in removing any residual doubt as to the nature of CSIR and decisively concludes the issues before us against it.

65. Sabhajit Tewary's decision must be and is in the circumstances overruled. Accordingly the matter is remitted back to the appropriate Bench to be dealt with in the light of our decision. There will be no order as to costs.

14. The argument which is sought to be advanced by the petitioner before this Court is in fact minority view of the judgment in the case of Pradeep Kumar Biswas (supra), wherein Hon"ble R.C. Lohati, J. for himself and Hon"ble Doraiswami Raju, JJ. has taken the view that society is not contemplated under Article 323A of the Constitution, as such Section 14 of Central Administrative Tribunal Act will not come into play and it will have no occasion to be pressed into service. Majority view is binding and as per majority view Society CSIR is "other authority" within the scope and ambit of Article 12 and Section 14 of the Central Administrative Tribunal Act, and after Notification being made, same merely shifted service disputes from the constitutional jurisdiction of High Court to Administrative Tribunals.

15. Petitioner himself in the writ petition has accepted this position that Kendriya Vidyalaya Sangathan is a society and it falls within the scope and ambit of Article 12 of the Constitution. Other authority as construed qua Article 323A, Part XIV of the Constitution cannot be differently construed and "other authority" will have to be construed on the same principle and the same meaning will have to be assigned to word "other authority" whether same is falling in part III Article 12 or part XIV Article 323A of Constitution of India. "Other authority" under Part XIV A Article 323A will take its colour from Part III Article 12 of the Constitution of India, as it is nothing more but shifting of service dispute from the constitutional jurisdiction of High Court to Administrative Tribunal.

16. On the parameters as set out above and which has been elaborately discussed in the case of Pradeep Kumar Biswas (supra), even society which is formed under the Societies Registration Act, 1860 and is financially, functionally and administratively dominated by or under the control of Government and such control is pervasive one, then it has to be accepted as "other authority" as described under Article 12 of the Constitution. As per Article 323A of the Constitution qua the employees of "other authority" under the control of Government, Parliament is entitled to make laws. Even if "society" has not been

mentioned under Article 323A of the Constitution, but if the society in question stands the test of other authority prescribed vis-a-vis Article 12 of the Constitution of India, then qua the same notification can be issued in exercise of authority vested u/s 14 (2) of the Central Administrative Tribunal Act. Label is not at all important, it is the content which decides and determines the issue. The construction of constitutional provisions has to be so which fulfill the aim and object of the Constitution. In the present case once society is covered within the definition of "other authority" and Article 323A clearly speaks that Parliament may make law on the subject in respect of certain matters and the Central government in its wisdom has proceeded to issue Notification bringing within its fold "Kendriya Vidyalaya Sangathan", then it cannot be said that it is a case excessive legislation, rather entire act is inter vires the statutory provisions. Here, Kendriya Vidyalaya Sangathan will fall within the scope of "other authority", as such Central Government has full domain to issue Notification.

17. Consequently, in view of the discussion made above, writ petition fails and the same is dismissed. Remedy of the petitioner lies in approaching Central Administrative Tribunal.