
(1994) 02 KL CK 0003
In the High Court Of Kerala
Case No : O.P. 16063/93 K

Devassy C.M.

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 10-02-1994

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 16(1), 19, 2, 20
Constitution of India, 1950 — Article 136, 226, 227, 323A, 323A(1)

Citation : (1994) 02 KL CK 0003

Hon'ble Judges : P.K. Balasubramannyan, J

Bench : Single Bench

Advocate : K.P. Satheesan, for the Appellant; M.R. Rajendran Nair, for the Respondent

Judgement

P.K. Balasubramannyan, J.—The Petitioner is a citizen of India. He is a resident of Cochin lying within the jurisdiction of this Court. He approached this Court to vindicate what he called public interest. According to him, Respondent No. 3 herein, who is unfit to hold the post of Director General of Police in the State, is sought to be appointed to that post by the Government of Kerala. He has sought the issue of a writ of mandamus directing the Government not to appoint the third Respondent as Director General of Police (Law and Order) and in the alternative, for a further direction to Respondents 1 and 2 to comply with all the requisite formalities before appointing the third Respondent. In the light of the allegations contained in the Original Petition this Court admitted the Original Petition on 24th November 1993 directing the issue of urgent notice to the Respondents. Urgent notice was ordered afco on the application for interim direction made by the Petitioner.

2. Respondent No. 3 entered apperance and filed a counter affidavit with a prayer that the question of the maintainability of the Original Petition under Article 226 of the Constitution maybe considered and decided as a preliminary issue. The Court having acceded to that prayer, the preliminary issue of the

maintainability of the Original Petition was heard. Meanwhile, the learned Advocate General had entered appearance on behalf of Respondents 1 and 2. All were heard. This order is confined to that question and it is made clear that no other aspect is intended to be dealt with by this order.

3. Mr. M.R. Rajendran Nair, the learned Counsel appearing for the third Respondent submitted that the third Respondent was an officer in the Indian Police Service. According to him the third Respondent was the seniormost Additional Director General of Police in the State. Earlier he was suspended by the State Government and he appealed to the Central Government questioning the said order of suspension. There was delay on the part of the Central Government in dealing with the appeal. The third Respondent therefore moved the Central Administrative Tribunal, Ernakulam Bench (hereinafter called the Tribunal) complaining of delay. The Tribunal directed the Central Government to dispose of the appeal expeditiously. The Central Government thereafter allowed the appeal and revoked the suspension of the third Respondent. The State Government did not promote the third Respondent. But during the period of suspension of the third Respondent the State Government promoted one T.V. Madhusoodanan, who was junior to the third Respondent. The third Respondent thereupon moved the Tribunal by O.A. No. 766 of 1993 seeking appropriate reliefs on the allegation that the third Respondent was entitled to be promoted at least from 29th April 1992. There was an interim direction by the Tribunal to the effect that for any position above the level of Inspector General of Police the third Respondent also should be considered. The Government issued orders promoting the third Respondent as Additional Director General of Police with effect from 29th April 1992 and posted the third Respondent as the Chairman and Managing Director of the Kerala Industrial Enterprises limited. On 1st May 1993 ex-cadre post of the Director General of Police became vacant. According to the third Respondent he should have been appointed in that post. Claiming that on Mr. Jayaram Padickal, the Director General of Police being posted as Chairman, Travancore Titanium Products, the post of Director General of Police had become vacant and he is entitled to be posted as Director General, the third Respondent moved the Tribunal by O.A. No. 1957 of 1993 praying for the issue of a direction to the State Government to appoint the third Respondent to the rank of Director General of Police. It is clarified by Mr. M.R. Rajendran Nair that the third Respondent did not ask for being posted as Director General of Police or Inspector General of Police (Law and Order) and that the third Respondent only sought a placement at the appropriate level. The said Original Application was filed on 13th November 1993. There was an interim order on 15th November 1993 granting the Government ten days time to make up its mind regarding the suitability of the applicant for appointment as Director General of Police. The Government could not arrive at a decision by that time and produced the files before the Tribunal to demonstrate what had been done. It is while matters stood thus, that the Petitioner in the Original Petition filed this Original Petition on 22nd November 1993 and this Court admitted the same on 24th November 1993.

According to Mr. Rajendran Nair when the admission of this Original Petition was brought to the notice of the Tribunal the Tribunal observed that there could be no parallel proceedings regarding the same dispute and in that view adjourned the matter to 7th December 1993. It is in that context that the third Respondent took up the stand that this Original Petition cannot be entertained by this Court and sought a decision on the question of the jurisdiction of this Court under Article 226 of the Constitution to deal with the questions raised at the instance of a citizen.

4. The Administrative Tribunals Act, 1985, hereafter called the Act, was enacted with a view to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment, conditions of service of persons appointed to public service and posts in connection with the affairs of the Union or any State or of any 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 in pursuance of Article 323A of the Constitution of India for matters connected therewith or incidental thereto. Section 2 of the Act provides that the provisions of the Act shall not apply to certain persons specified in that Section. An officer in the Indian Police Service does not come under the said exemption. Section 3(q) defines service matters to mean all matters relating the conditions of service of a person in connection with the affairs of the Union or State in respect of remuneration, pension etc., tenure including confirmation, seniority, promotion etc., leave, disciplinary matters and "any other matter whatsoever". Section 14 of the Act defines the jurisdiction, powers and authority of the Tribunal. The Tribunal is to exercise all powers and authority exercisable immediately before the appointed day by all Courts except the Supreme Court in relation to recruitment and all service matters concerning a member of any All India Service. Section 19 provides for applications to be made to the Tribunal by an aggrieved person. Section 20 insists that no aggrieved person can approach the Tribunal unless he has exhausted other remedies available to him under the relevant service rules. Section 21 provides a period of limitation for approaching the Tribunal and Section 22 lays down the procedure to be followed by the Tribunal. Section 26 of the Act provides for decision by the Tribunal on the application made and Section 27 provides for execution of the orders of the Tribunal. Section 28 of the Act excludes the jurisdiction of all the Courts except the Supreme Court and the Industrial Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning the members of any service or persons appointed to any service or post.

5. It has to be noticed at this stage that under Article 323A of the Constitution, the Parliament can by law provide for establishment of Administrative Tribunals and can make law in that behalf providing for excluding the jurisdiction of all Courts except the jurisdiction of the Supreme Court under Article 136 of the Constitution with respect to disputes and complaints referred to in Clause (1) of Article 323A. Clause 1 refers to disputes and complaints with respect to

recruitment and conditions of service of persons appointed in public services and posts in connection with the affairs of the Union or of the State. According to the counsel the Act was enacted by Parliament in terms of Article 323A of the Constitution and it has provided for the vesting of jurisdiction exclusively with the Tribunal in service matters relating to an officer in the Indian Police Service and since Article 323A(2)(d) permits exclusion of the jurisdiction of the High Court and since by Section 28, the Act itself has excluded the jurisdiction of the High Court, this Original Petition under Article 226 of the Constitution is not maintainable.

6. The vires of the Act was challenged before the Supreme Court. The Supreme Court in *S.P. Sampathkumar v. Union of India* AIR 1987 S.C. 386 upheld the validity of the Act. Speaking of the Tribunal the Supreme Court observed:

...The Tribunal has been contemplated as a substitute and not as supplemental to the High Court in the scheme of administration of justice. To provide the Tribunal as an additional forum from where parties could go to the High Court would certainly have been a retrograde step considering the situation and circumstances to meet which the innovation has been brought about. Thus barring of the jurisdiction of the High Court can indeed not be a valid ground of attack.

Again in *P. Sambamurthy v. State of A.P.* AIR 1957 S.C. 663 the Supreme Court upheld the validity of the Constitution of the State Tribunal. Now in *R.K. Jain Vs. Union of India and Others*, the Supreme Court has observed:

In a democracy governed by rule of law surely the only acceptable repository of absolute discretion should be the Courts. Judicial review is the basic and essential feature of the Indian constitutional scheme entrusted to the judiciary. It cannot be dispensed with by creating Tribunal under Articles 323A and 323B of the Constitution. Any institutional mechanism or authority in negation of judicial review is destructive of basic structure. So long as the alternative institutional mechanism or authority set up by an Act is not less effective than the High Court, it is consistent with constitutional scheme.

It is in this background that the relevant question has to be considered.

7. The learned Counsel for Respondent No. 3 contends that the third Respondent is an officer in the Police Service and the relief sought for in the Original Petition relates to his service and his possible appointment as the Director General of Police and hence the question falls squarely under the Act and within the jurisdiction of the Tribunal. This plea is met by counsel for the Petitioner by contending that the Petitioner, not a member of any service, is not a person aggrieved who can approach the Tribunal and can approach only this Court under Article 226 of the Constitution to vindicate public interest and hence the Original Petition is maintainable. The learned Advocate General submitted that when in a case like the present a citizen has approached this Court with a view to ensure purity in administration, the jurisdiction of this Court under Article 226 of the

Constitution is not taken away by anything contained in the Act.

8. It is interesting at this stage to notice the decision in Padmakumar's case ILR 1992 Ker. 677. In that case, a citizen first approached the Tribunal complaining that the extension of service as Chief Secretary to Government granted to Sri. Padmakumar was bad in law and beyond the competence of the State Government. That application numbered as O.A. 585 of 1992 by the Tribunal was held to be not maintainable in the Tribunal inter alia for the reason that it had no jurisdiction to entertain the challenge of a person not in service to the appointment or continuance of a person in service and who was otherwise governed by the Act. That Petitioner thereupon approached this Court under Article 226 of the Constitution seeking the issue of a writ of quo warranto and this Court entertained that Original Petition. No doubt before this Court, the objection to jurisdiction was not specifically taken. But the said decision implies that the jurisdiction of this Court is not barred. It is not disputed that as far as the Ernakulam Bench of the Tribunal is concerned, the decision in O.A. 585 of 1992 holds the field and has not been overruled by any larger bench.

9. The third Respondent is in Indian Police Service and any grievance he has regarding his service, he has to get it redressed through the Tribunal. His claim for promotion will certainly be within in the jurisdiction of the Tribunal. But the question is whether a person not in service, but who seeks a relief relating to the promotion of Respondent No. 3 can approach the Tribunal with an application under the Act. This involves an analysis of the Act and the jurisdiction of the Tribunal under the Act.

10. It is no doubt true that the preamble to the Act indicates that it is intended to provide for the adjudication or trial by the Tribunal of all disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts and Section 3(q) defines service matters in wide terms. But notwithstanding such wide definition and the rather wide implications of the preamble to the Act, Section 19 of the Act confers the right to approach the Tribunal only on a person who is aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal. Section 20 of the Act reinforces the entitlement of a person aggrieved alone having the competence to approach the Tribunal by indicating that the said person ought to have also exhausted the alternate remedies available to him under the relevant service rules as to redressal of his grievance. Section 14 of the Act specifies that the jurisdiction is vested in the Tribunal in relation to all service matters concerning a member of any All India Service. If read without reference to Sections 19 and 20 of the Act it may be possible to say that even a person who is complaining of the right of a person in service to a particular post or to promotion could approach the Tribunal for the redressal of his grievance. But read in the context of Sections 19 and 20 of the Act it appears to me that the approach to the Tribunal is confined to only a person who is seeking recruitment or who is in service and who is putting forward a claim on his own or is affected in service by the

recognition of the claim of another in service. Section 28 of the Act which provides for exclusion of jurisdiction of Courts also refers to the exclusion of jurisdiction in relation to recruitment and matters concerning recruitment to any iserviee or post or service matters concerning the members of any service or persons appointed to any service or post. This in my view emphasises the position that only a person who is seeking a post or is holding a post and who is aggrieved by anything done to him in matters connected with his promotion or service conditions, has the locus Standi to approach the Tribunal. So long as a person is not claiming any post and is not complaining of any deprivation of the rightfull promotion or any other service benefits due to him he cannot be considered to be a person aggrieved entitled to approach the Tribunal u/s 19 of the Act. It is clear that Section 14 cannot be read in isolation and has to be read alongwith the definition of service matters contained in Section 3(q) of the Act and Section 19 of the Act. If so read, it is not possible to uphold the contention of the third Respondent that the Petitioner, not a person in any service, is entitled to approach the Tribunal to seek a direction to the Government not to promote or appoint the third Respondent as the Director General of Police. Sections 14 and 28 of the Act seek to exclude the jurisdiction of the High Court under Article 226 of the Constitution. It appears to me clear that any such provision concerning the exclusion of the jurisdiction of the High Court under Article 226 of the Constitution should be construed strictly and without any attempt to enlarge the scope of such exclusion. Based on this principle if we read the relevant provisions of the Act I am of the view that the approach of a person like the Petitioner to this Court under Article 226 of the Constitution cannot be held to be barred.

11. There is another aspect. Going by Section 19 of the Act it cannot be said that the Petitioner is a person aggrieved by the promotion or non-promotion of the third Respondent. It is therefore highly doubtful whether the Petitioner can approach the Tribunal u/s 19 of the Act going by the scheme of Section 19 read with Section 20 of the Act. When there is such a doubt as to the entitlement of a person like the Petitioner to approach the Tribunal, putting forward what he calls a public grievance, this Court cannot decline jurisdiction under Article 226 of the Constitution in such a situation. The doubt regarding the existence of jurisdiction in the Tribunal in my view should favour an approach in favour of existence of jurisdiction in this Court undef Article 226 of the Constitution.

12. It appears to me that the interpretation placed by me as above on the scope of the Act is not inconsistent with what is provided for under Article 323A(1) of the Constitution which indicates that the Act is intended to provide for relief to a person who is in service and is aggrieved by any order or proceeding concerning his service. Article 323A of the Constitution indicates that the Tribunal has to adjudicate on disputes and complaints with respect to recruitment and conditions of service of persons appointed to public service and Article 323A(2)(b) provides that the Act creating the Tribunal may specify the jurisdiction, powers and authority which may be exercised by the Tribunal. If the scope of the Act is as

explained by me earlier there cannot be any difficulty in holding that a finding that a stranger to the service like the Petitioner cannot approach the Tribunal is in no way inconsistent with what is sought to be achieved by Article 323A of the Constitution. If a person like the Petitioner who is outside the service and who is not laying claim to any post and is not putting forward any grievance regarding any service matter as far as he is concerned cannot approach the Tribunal, the mere fact that the questions the entitlement of a person in service to a higher post cannot bring him within the purview of the Act. In other words, a person who is otherwise outside the purview of the Act will not be roped in by the provisions of the Act merely because what he seeks to question is the proposed act by a Government or to prevent an act by the Government which may affect the sex vice conditions of an officer coming within the purview of the Act. This understanding of the scope of the Act in my view is in no way affected by the observations of the Supreme Court in Sampath Kumar's case AIR 1987 S.C. 386 and the decision in J.B. Chopra and Others Vs. Union of India (UOI) and Others, that the Tribunal may have power to strike down as invalid any service regulation as being violative of Articles 14 and 16(1) of the Constitution. It can only mean that in any matter moved by a civil servant coming within the purview of the Act, the Tribunal may have jurisdiction that was being exercised by the High Court under Article 226 of the Constitution including the power to strike down a particular provision. The fact that within that limited sphere the Tribunal has that jurisdiction cannot enable the third Respondent in this case to contend that the jurisdiction of the Tribunal also extends to a person who is not in service and who is not complaining of any matter connected with his service as provided for by the Act.

13. The learned Counsel for the Petitioner relies on another aspect as well. He submits with reference to the recent decision of the Andhra Pradesh High Court in W.P. 518 of 1993 and other connected cases that Article 323A(2)(d) of the Constitution itself is unconstitutional to the extent it empowers the Parliament by law to exclude the jurisdiction of the High Court under Article 226 of the Constitution and Section 28 of the Act to the extent it divests the High Court of its jurisdiction under Article 226 of the Constitution is unconstitutional. No doubt the Supreme Court has now granted the Respondents in that case special leave to appeal to the Supreme Court and as newspaper reports indicate has also stayed the operation of the said judgment. It is in that context that one has to also refer to the observations of the Supreme Court itself in R.K. Jain Vs. Union of India and Others, wherein the Supreme Court explaining the decision in Sampath Kumar's case AIR 1987 S.C. 386 observed:

This Court did not appear to have meant that the Tribunals are substitutes of the High Court under Article 226 and Article 227 of the Constitution.

and the further observations earlier quoted regarding any constitutional mechanism or authority in negation of judicial review being destructive of the basic structure of the Constitution. The further observation in the said decision

that it is time to have a look at the functioning of the Tribunals is also relevant in this context. Though therefore the decision of the Andhra Pradesh High Court which has only a persuasive value cannot be treated as the final word on that question, it is necessary to notice that the question whether the very exclusion of jurisdiction of High Court under Article 226 of the Constitution itself is constitutional is a matter which is pending before the Supreme Court. In such a situation I do not think that it is proper or appropriate for the High Court to uphold the preliminary objection to jurisdiction on the basis of the Act.

14. Then there is the aspect of public interest. The questions brought under that head to this Court under Article 226 of the Constitution of India may also involve questions that may come within the purview of the Act and the jurisdiction of the Tribunal in respect of a Respondent involved therein. The Tribunal may not be competent to grant relief to a Petitioner since its jurisdiction is confined to what is provided for by the Act. Can this Court decline jurisdiction on the ground that one of the reliefs sought for in such a petition may relate to the service matter of a Respondent before this Court? I think not. In these days of the ever expanding horizon of public interest litigation, this Court will be failing in its duty if it declines jurisdiction on the ground that some of the aspects sought to be agitated may come within the realm of the Act and the jurisdiction of the Tribunal. The Tribunal is constituted after all only for redressal of specified grievances of certain persons on certain matters and the exclusion of the jurisdiction of the Court is confined only regarding such specified person and such specified matters.

I therefore overrule the preliminary objection regarding the maintainability of this Original Petition raised on behalf of the third Respondent. I hold that this Original Petition under Article 226 of the Constitution is maintainable. I make it clear that no other question concerning the merits of the case are dealt with by this order. All the other questions would be considered and decided when the Original Petition is finally heard.