

(1997) 09 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : C.W.P. No"s. 170, 203, 582/90, 130/92 and 1327/95

Dr. M.P. Dwivedi and Others

APPELLANT

Vs

Dr. Y.S. Parmar University and Another

RESPONDENT

Date of Decision : 02-09-1997

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 14(2), 15(2), 3
Constitution of India, 1950 — Article 12, 323A

Citation : (1998) 2 ShimLC 192

Hon'ble Judges : M. Srinivasan, C.J.;A.L. Vaidya, J

Bench : Division Bench

Advocate : K.D Shreedhar, in CWP No. 170, 582 of 90, Neel Kamal, in CWP No. 203 of 90, H.M. Sharma, in CWP No. 130 of 92 and L.C. Kapoor, in CWP No. 1327 of 95, for the Appellant; D.C. Jishtu in CWP Nos. 170, 203 and 582 of 90 and 130 of 92, Rajiv Sharma in CWP No. 582 of 90, B.P. Sharma and R.K. Sharma, in CWP No. 130 of 92 and Abhilasha Kumari in CWP No. 1327 of 95, for the Respondent

Judgement

M. Srinivasan, C.J.—In these cases, the main question, which is to be decided is whether the Himachal Pradesh University and the Universities constituted under the Himachal Pradesh Universities of Agriculture, Horticulture and Forestry Act, 1986 are governed by the provisions of the Administrative Tribunals Act. The answer to the question will depend upon two questions, (1) whether the said Universities will fall within the scope of Section 15(2) of the Administrative Tribunals Act, 1985 and (2) whether those Universities are owned or controlled by the State Government.

2. Insofar as the first question is concerned, there is a judgment of a Division Bench of this Court in Jeet Ram Thakur v. Himachal Pradesh University and Ors. 1988 (2) Shim.L.C. 51. In that case, there was no dispute that the University was an autonomous body and it was neither controlled nor owned by the Government. On the basis of that concession, the Division Bench proceeded to consider the provisions of Section 15(2) of the Administrative Tribunals Act and

held that the Universities in order to be brought within the ambit of the Administrative Tribunals Act should have been notified by the Central Government u/s 14(2) of the Act. In other words, the decision of the Bench was that the Universities will fall within the expression "local or other authorities within the territory of India as found in Section 14(2) of the Act and Section 15(2) would apply only to local or other authorities and corporations or Societies controlled or owned by the State Government. The Division Bench expressed the opinion that the University not being owned or controlled by the State Government would fall within Section 14 of the Act and a notification is necessary by the Central Government in order to make the Act applicable to the University.

3. The decision of the Division Bench was referred to and relied upon before a Full Bench in *Vinod Kumar v. H.R.T.C. and Ors.* 1995 (2) Shim.L.C. 24. The Full Bench observed as follows:

Since the question whether the H.P. University is owned or controlled by the State Government was not in issue in that judgment, we are of the view that the same will require consideration in some suitable case. Clearly, therefore, the decision does not support the submission of the learned Counsel and for that reason is rejected.

4. Even apart from that, in our opinion, the decision requires reconsideration on the question whether it is the Central Government, which should issue a notification u/s 14(2) of the Act for making the Act applicable to the University or the University can be governed by a notification issued by the State Government. In our opinion, *prima facie*, the view expressed by the Division Bench does not appear to be in consonance with the law. The provisions in the Constitution, namely, Articles 12 and 323A should be read along with the Preamble to the Administrative Tribunals Act as well as Section 3 (q) of the said Act. If all those provisions are kept in mind, it will be clear that the Act was intended to create two Tribunals, one Central Administrative Tribunal and the other the State Administrative Tribunal. The Central Administrative Tribunal is intended to deal with service matters, which pertain to local or other authorities created by the Central enactments and the State Tribunal is intended for service matters pertaining to local or other authorities created by the State enactments. This distinction has to be kept in mind otherwise it will lead to an anomalous situation. When the State Tribunal is authorised and governed by the Act to deal with all service matters pertaining to the State Government, Corporations and Societies, owned and controlled by the State Government. It will be incongruous to say that in the case of local authority created by the State enactment it would be governed by the Central Administrative Tribunal that will also lead to *Anr.* practical difficulty in the State. In the event of a notification being issued and the matter being decided by the Central Administrative Tribunal, which is situated in Chandigarh There will be a possibility of a writ petition being filed in Punjab and Haryana High Court as well as a writ petition being filed in this Court as part of

the cause of action can be said to have arisen within the jurisdiction of the Punjab and Haryana High Court and also within the jurisdiction of this Court.

5. Apart from that the general principle in the matter of interpretation of Statutes has been clearly laid down by the Supreme Court in *Union of India and Ors. v. Filip Tiago De Gama of Vedem Vasco De Gama* AIR 1990 S.C. 981. The following passage is relevant:

The paramount object in statutory interpretation is to discover what the Legislature intended. This intention is primarily to be ascertained from the test of enactment in question. That does not mean the text is to be construed merely as a piece of prose, without reference to its nature or purpose. A statute is neither a literary test nor a device revelation. "Words are certainly not crystals, transparent and unchanged" as Mr. Justice Holmes has wisely and properly warned. Learned Hand, J., was equally emphatic when he said: "Statutes should be construed, not as a theorems of Euclid, but with some imagination of the purposes which lie behind them."

6. If that test is applied, certainly it will be clear that it will be the State Government which is entitled to issue a notification u/s 15(2) of the Act with respect to all local or other authorities created by the State enactments.

7. It is also to be noted that the expression used between the words "authorities" and the words "Corporations" is "and" and not "or". The significant use of "and" should be taken note of while interpreting Section 15(2) of the Act. That will be clear if we have a look at the Preamble of the Act as well as Article 12 and Article 323A of the Constitution of India-That will show that the words "Controlled or owned" by the State Government do not go with the words "local or other authorities" and apply only to the Corporations or Societies.

8. In that situation, in our opinion, it is necessary to refer the matter to a larger Bench to consider the correctness of the judgment of the Division Bench in *Jeet Ram Thakur*'s case 1988 (2) Shim.L.C. 51.

9. The second question is an important question of law, which pertains to three of the Universities functioning in the State created under two different statutes. The question is whether those Universities are owned or controlled by the State Government. That question depends upon the interpretation of the various provisions of the two enactments. Hence, in our opinion, that question should also be considered by a Full Bench, so that an authoritative pronouncement can be given thereon.

10. In the circumstances, we refer these writ petitions to be decided by a Full Bench, which consists of three Judges. The Chief Justice will constitute the Full Bench.

11. Post these cases on 16.9.1997 before the Full Bench.