

(2022) 04 CAL CK 0084
In the Calcutta High Court
Case No : W.P. L.R.T. No. 4 Of 2022

ESAB India Limited

APPELLANT

Vs

Electro Steel Castings Limited & Ors.

RESPONDENT

Date of Decision : 22-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 32, 32(3), 226, 227, 323A, 323B

West Bengal Land Reforms Act, 1955 — Section 4C

Urban Land (Ceiling And Regulation) Act, 1976 — Section 20

Citation : (2022) 04 CAL CK 0084

Hon'ble Judges : Harish Tandon, J; Rabindranath Samanta, J

Bench : Division Bench

Advocate : Saktinath Mukherjee, Saptangshu Basu, Supratim Dhar, Siddhartha Banerjee, Abhisek Baran Das, Abhrajit Mitra, Sharbopriyo Mukherjee, A. Agarwalla

Final Decision : Disposed Of

Judgement

Harish Tandon, J

The instant writ petition has been taken out assailing an interim order dated 7th October, 2021 passed by the West Bengal Land Reforms and Tenancy Tribunal in OA no. 2011 of 2021 by which the direction was passed not to give effect to the impugned order dated 28.7.2021 passed by the Commissioner, Presidency Division in Appeal case no. 2 of 2019/2020 together with an order dated 28.8.2019 passed by the District Land and Land Reforms Officer, North 24 Parganas in Case no. C – 14/18 under Section 4C of the West Bengal Land Reforms Act, 1955 till the next date. The dispute pertains to the land comprised of 7.2 acres in different plots appertaining to in Khatian no. 7572 JL no. 2 at Mouza Khardaha within the Khardaha Police Station in the District of 24 Parganas (North). The said plots of land originally belonged to M/s. India Oxygen Ltd. for carrying on manufacturing of the electrodes. Subsequently, the said land was sold to the petitioner herein by dint of purchase dated 16th March, 1993. Prior to

the sale of the said land the original owner applied under Section 20 of the Urban Land (Ceiling and Regulation) Act, 1976 seeking permission to sell the said plot of land together with the structures standing thereupon in favour of the writ petitioner herein. By an order dated 29th October, 1992, the exemption was granted under Section 20 of the said Act with certain conditions incorporated therein. Though the writ petitioner has pleaded that there was no necessity to seek permission as the said plots of land were outside the purview of the said Act yet it appears that the said permission was taken and granted which are disclosed in the record. After purchase of the property, the petitioner claimed to have continued with the business activities thereat till 2015. It subsequently transpired that the said plot of land was recorded as 'Shali' although the business activity was carried on at the said plot of land by the predecessor since 1956 and continued after the sale by the writ petitioner till 2015. The Respondent no. 1 showed his intention to purchase land owned and possessed by the petitioner and upon negotiation and the settlement of the terms and conditions, 3.26 acres of land comprised in different plot nos. were sold, transferred and conveyed to the Respondent no. 1 by the petitioner by executing deed of conveyance on 18th July, 2003 which was subsequently registered before the competent registering authority. Upon purchase of the said plot of land, the Respondent no. 1 demarcated the said land by raising a high wall and it does not appear from the pleading of the parties that there is any dispute concerning the boundary. The pleading goes in the instant writ petition is that the said Respondent no. 1 intended to purchase the property which the writ petitioner retained and/or owned and having received the refusal, the approach was made to the Department of Urban Development and Municipal Affairs (Urban Land Ceiling Branch), Government of West Bengal for revocation of the exemption granted under Section 20 of the said Act at the behest of the predecessor of the writ petitioner. The proceeding was considered as an appeal filed by the Respondent no. 1 which having filed before the Special Secretary and the appellate authority by an order dated 23rd January, 2021 dismissed the said appeal. The order of the appellate authority was further challenged before this court in WPA no. 1165 of 2 of 2021 which is still pending. There is no interim order passed in the said writ petition and, therefore, as of this day the order passed by the appellate authority under the said Act is still operative. Amidst the pendency of such dispute, an application was taken out by the petitioner before the Additional District Magistrate and District Land and Land Reforms Officer seeking conversion of the character of the plot of land from 'Shali' to residential purposes. The aforesaid application was taken out under Section 4C of the West Bengal Land Reforms Act, 1955 and in course of the hearing, an amendment was taken out to the effect that instead of residential purposes such conversion should be granted for establishment of the "industrial park". The Respondent no. 1 intervened in the said proceedings and a plea of locus was raised but the said authority without venturing to go into the aforesaid aspect permitted him to make submissions and ultimately allowed the application by granting conversion of the land from 'Shali' to 'industrial park'. A plea was taken before the said authority that by virtue of a

notification dated 24.9.2014 the conversion of a land to industrial park can only be permitted if the land in question is comprised of 20 acres or more. Such contention was repelled for the simple reason that though the record of right indicates the nature of the plot as 'shali', but, in fact, it was being used for industrial purposes from time immemorial and, therefore, there is no fetter in the statute to grant such conversion. The said order is assailed before the Tribunal by the Respondent no. 1. By the impugned order, the Tribunal recorded the submission of the writ petitioner as well as the Respondent no. 1 and surreptitiously jumped to the conclusion that if the interim order is not passed, the purpose of filing the original application would be frustrated.

In *L. Chandra Kumar vs. Union of India & Ors.* Reported in 1997 (3) SCC 261 the basic question which fell for consideration is whether the Tribunals constituted under Article 323A and 323B can exclude the power of judicial review enshrined under Article 226 or a power of superintendence under Article 227 of the Constitution of India. Incidentally, the argument was also advanced whether by establishing such Tribunal, a power under Article 32 of the Constitution of India conferred upon the Supreme Court has been whittled down and/or abrogated through a legislative fiat. Repelling the aforesaid contention, the Constitution Bench of the Supreme Court held that by establishing the Tribunal it does not abridge the power of the High Court and the Supreme Court under Article 226/227 and 32 of the Constitution respectively but they performed as supplemental thereto and cannot be treated as substitute of the High Court or the Supreme Court. It has been held that the power of the High Court under Article 226/227 and the power of the Supreme Court under Article 32 are the basic ethos of the Constitution and cannot be curbed and/or taken away. The enlightening observations made therein are reproduced as under:

"80. However, it is important to emphasise that though the subordinate judiciary or Tribunals created under ordinary legislations cannot exercise the power or judicial review or legislative action to the exclusion of the High Courts and the Supreme Court, there is no constitutional prohibition against their performing a supplemental – as opposed to a substitutional – role in this respect. That such a situation is contemplated within the constitutional scheme becomes evident when one analyses clause (3) of Article 32 of the Constitution which reads as under:

32. Remedies for enforcement of rights conferred by this Part. –

(1) * * *

(2) * * *

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(emphasis supplied)

81. If the power under Article 32 of the Constitution, which has been described as the "heart" and "soul" of the Constitution, can be additionally conferred upon "any other court", there is no reason why the same situation cannot subsist in respect of the jurisdiction conferred upon the High Courts under Article 226 of the Constitution. So long as the jurisdiction of the High Courts under Article 226/227 and that of this Court under Article 32 is retained, there is no reason why the power to test the validity of legislations against the provisions of the Constitution cannot be conferred upon Administrative Tribunals created under the Act or upon Tribunals created under Article 323-B of the Constitution. It is to be remembered that , apart from the authorisation that flows from Article 323-A and 323-B, both Parliament and the State Legislatures possess legislative competence to effect changes in the original jurisdiction of the Supreme Court and the High Courts. This power is available to Parliament under Entries 77,78,79 and 95 of List I and to the State Legislatures under Entry 65 of List II; Entry 46 of List III can also be availed of both by Parliament and the State Legislatures for this purpose.

82. There are pressing reasons why we are anxious to preserve the conferment of such a power on these Tribunals. When the Framers of our Constitution bestowed the powers of judicial review of legislative action upon the High Courts and the Supreme Court, they ensured that other constitutional safeguards were created to assist them in effectively discharging this onerous burden. The expectation was that this power would be required to be used only occasionally. However, in the five decades that have ensued since Independence, the quantity of litigation before the High courts has exploded in an unprecedented manner. The decision in Sampath Kumar case was rendered against such a backdrop. We are conscious of the fact that when a Constitutional Bench of this Court in Sampath Kumar Case adopted the theory of alternative institutional mechanisms, it was attempting to remedy an alarming practical situation and the approach selected by it appeared to be most appropriate to meet the exigencies of the time. Nearly a decade later, we are now in a position to review the theoretical and practical results that have arisen as a consequence of the adoption of such an approach.

83. We must, at this stage, focus upon the factual position which occasioned the adoption of the theory of alternative institutional mechanisms in Sampath Kumar Case. In his leading judgment, Ranganath Misra, J. Refers to the fact that since independence, the population explosion and the increase in litigation had greatly increased the burden of pendency in the High Courts. Reference was made to the studies conducted towards relieving the High Courts of their increased load. In this regard, the recommendations of the Shah Committee for setting up independent Tribunals as also the suggestion of the Administrative Reforms Commission that Civil Service Tribunals be set up, were noted. Reference was also made to the decision in Kamal Kanti Dutta v. Union of India where this Court had, while emphasising the need for speedy resolution of service disputes, proposed the establishment of Service Tribunals."

From the aforesaid observations made in the above-noted report, the Tribunal functions as supplement to the aforesaid powers yet, the decision or judgment of the Tribunal is amenable to be tested, corrected and reviewed by the High Court and the Supreme Court under Article 226/227 and 32 of the Constitution of India. The nature of the Tribunal and its functioning leaves no ambiguity that they decide the cause and the action of the authorities on the well settled legal parameters and even they are well equipped to consider the constitutional provisions including the virus thereof. Once the power is conferred upon the Tribunal to vary, set aside, modify and/or uphold the decision of the authority, the power to pass an interim order is inbuilt and inherent in it. While passing the interim order, the Tribunal cannot assume unbridled, indefinite and uncertain procedure but must confine within the peripheral of the settled proposition of law declared by the Supreme Court concerning the interim orders. In *Shiv Kumar Chadha vs. Municipal Corporation of Delhi & Ors* Civil Appeal no. 2532 of 1993 (3) SCC 161, the Apex Court has succinctly indicated the parameters required for passing the interim order and deprecated the mode of passing such interim order in a cryptic manner. Any journey travelled without recording the reason has been deprecated by the Supreme Court in the above-noted decision. The importance of reason has been highlighted time and again and is considered as a heart and soul of the body of the order. The order bereft of reason cannot be regarded as legally, sustainable order far to speak of, no order. Though the High Court in exercise of judicial review does not act as a court of appeal yet, it can go into the decision making process or the thought process which forms the basis of the interim order. Any order without any reason shall not assist the court to understand the thought process of the learned Judge manning the Tribunal. Interim orders are basically passed upon satisfaction of three golden tests namely, the existence of prima facie case, balance of convenience and inconvenience and irreparable loss and injury. It is an ardent duty of the court or the Tribunal while passing the interim order to make a prima facie finding on the existence of a prima facie case and the balance of convenience and inconvenience that would be cause to the parties and if the order is not passed it would cause irreparable loss and injury. We find no reason to concur with the finding of the Tribunal that merely because the Tribunal application has been taken out challenging the order of the appellate authority and if the interim order is not passed it would render it infructuous. We do not find any discussion nor a finding returned on the existence of a prima facie case nor on the other two parameters and, therefore, the said impugned order is cryptic and passed in a truncated manner defying the mandate of the Apex Court where the importance of providing the reasons has been highlighted. Though arguments have been advanced on the locus of the Respondent no. 1 which, in our opinion, is essentially a question to be decided in the Tribunal application and, therefore, we do not venture to go into such aspect at this stage more particularly when an interim order is a subject matter of challenge in the instant writ petition. All the points are kept open and shall be decided by the Tribunal. Since we have found that the impugned order is lacking reasons, the same cannot be sustained and,

therefore, is set aside. The matter is remitted to the Tribunal with a liberty to the Respondent no. 1 to pray for interim order and if such prayer is made, the Tribunal shall decide the same after giving opportunity of hearing to the writ petitioner and the other respondents therein by recording proper reasons in the light of the observations made hereinabove. The writ petition is, thus, disposed of.

No order as to costs.

Urgent photostat certified copies of this judgment, if applied for, be made available to the parties subject to compliance with requisite formalities.

I agree.