
(1987) 12 AHC CK 0039
In the Allahabad High Court
Case No : Writ Petition No. 5343 of 1987

Hanuman Prasad

APPELLANT

Vs

State of U.P. & Another

RESPONDENT

Date of Decision : 04-12-1987

Acts Referred:

Citation : (1987) 12 AHC CK 0039

Hon'ble Judges : K.C.Agarwal, J and P.Dayal, J

Final Decision : Dismissed

Judgement

K.C. Agarwal, J.—This petition under Article 226 of the Constitution raises the same questions for decision, which arise in the connected writ petition nos. 5648 of 1987 Samar Veer Johri v. State of U. P., 4382 of 1987 Shashi Bala v. State, 4373 of 1987 Ashok Kumar v. State, and 4385 of 1987 Rajesh Kumar v. State of U.P.

2. The main arguments in this bunch had been advanced by Sri Amit Bose, Advocate. He was supported by Sri G.S.L. Verma, Advocate.

3. The points urged were:

?That after the enactment and implementation of the Central Administrative Tribunal Act, 1985 (Act No. 13 of 1985) (hereinafter referred to as Act No. 13 of 1985), by the Parliament, the U.P. Public Services (Tribunals) Act, 1976, (Act No. XVII of 1976) (hereinafter referred to as Act No. XVII of 1976) by the State Legislature has become redundant. The Tribunals created under Act No. XVII of 1976, therefore, have no power to adjudicate in respect of the matters relating to employment of the public servants of the State of U.P.?

4. In 1976, the State Legislature passed the U.P. Public Services (Tribunals) Act, 1976 to provide for the establishment of the Public Services Tribunals pertaining to the employment matters of the Government servants and also of the employees of the local authorities and Government Corporation and Companies,

so that the employees could get quick and inexpensive justice.

5. The validity of the aforesaid Act was challenged before this Court in a number of cases. The Act was found valid.

6. Articles 323A and 323B were inserted by the Constitution (42nd Amendment) Act, 1976 and appended a new chapter in Indian Constitutional and Administrative law by excluding judicial review of the administrative decisions. The intention behind the insertion of these two Articles was to provide for constitution of the Tribunals for exclusively deciding the cases of the Central Government employees, its Corporations etc. In pursuance of Article 323A, the Parliament enacted the Administrative Tribunal Act, 1985 (Act No. 13 of 1985). The object of this Act was to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with regard 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 of any corporation owned or controlled by the Government and for matters connected therewith or incidental thereto.

7. After the enforcement of this Act, the Tribunals were constituted by the Central Government, in various States. Section 14 of the aforesaid Act lays down the powers and authority of the Central Administrative Tribunals. It further excluded all the jurisdiction, powers and authority exercisable before the enactment of Act No. XIII of 1985 by all Courts (except the Supreme Court under Article 136 of the Constitution) in relation to matters specified in clauses (a) to (c) of Section 14.

8. The first submission made by the petitioner's counsel was that in view of subArticle (3) of Article 323 A, the provisions of U.P. Act No. XVII of 1976 were deemed to have been repealed and, as such, the Tribunals created under the U.P. Act No. XVII of 1976 cease to have jurisdiction to try the service disputes in respect of the employees of the State of U.P. SubArticle (3) reads as under :

?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.?

9. Amongst others, the main submission of the petitioner's counsel was that U.P. Act No. XVII of 1976 is repugnant to the provisions of Central Act No. 13 of 1985 and, as such, the U.P. Act became inoperative. We had been taken through the various provisions of the two Acts by the learned counsel for the purpose of showing the inconsistency between them. Counsel urged that in view of Articles 245, 246 and 254 (2), the Central Act will; prevail over the State Act.

10. Neither Article 323 A nor 323 B is selfexecuting provision. They merely authorise the specified Legislature to make laws and set up such Tribunals and to include therein ancillary provisions. In other words, they only offer the constitutional authority for such legislation. It follows that so long as no law is

made under Article 323 A (2)(d) or 323B(3)(d), the existing jurisdiction of the Tribunals created under a valid legislation would continue and will not be ousted simply because, according to the 42nd Amendment Act, these matters are triable by Tribunals to the exclusion of the Courts including the Tribunals created by the State Legislatures. Article 323 A (1) read with clause (d) would indicate that these are enabling provisions which have been given a constitutional authority for making of a law excluding the jurisdiction of the Civil Courts including that of the High Court.

11. The Administrative Tribunal Act, 1985 became applicable to the employees of the Central Government, but so far as those of the States are concerned, it had to be made applicable to them by a notification to be made under subclause (4) of Section 1 of the Administrative Tribunal Act. Subclause (4) of Section 1 reads as under :

?The provisions of this Act, in so far as they relate to an Administrative Tribunal, for a State, shall come into force in a State on such date as the Central Government may, by notification, appoint.?

12. The Administrative Tribunal Act, 1985 did not become applicable ipso facto to the State employees and those who were governed by the U.P. Public Services (Tribunals) Act, 1976. It is admitted that no such notification as is provided under subsection (4) of Section 1 of Act No. 13 of 1985, had been notified. Consequently, the Administrative Tribunal Act, 1985 does not apply to the State employees. The disputes relating to their service conditions are governed by the U.P. Public Services (Tribunals) Act, 1976. After the enactment of Article 323 A, a controversy arose in two cases before this court whether the U.P. Public Services (Tribunals) Act, 1976 had been rendered invalid. This court in *Ramashraya Yadav v. State of U.P. and others*, 1982 U.P. Services cases, 147, held:

?Article 323 A is merely an enabling provision and does not itself oust the jurisdiction of the Tribunals created by any Act. The enactment of U.P. Public Services (Tribunals) Act, 1976 was within the legislative competence of the State Legislature under Entry 41 of List II of the Seventh Schedule of the Constitution. In absence of a law enacted by the Parliament in exercise of the power conferred by Article 323 A, the question of repugnancy does not arise.?

13. Similar view was taken by another Division Bench in *Lal ji Harijan v. State of U.P. and others*, 1982 U.P. Services cases, 142. It is as under:

?Article 323 A of the Constitution of India vested in the Union Legislature a concurrent power to provide for adjudication by administrative tribunals of service disputes but did not take away the powers of the State Legislature. Since Parliament has not enacted any such law, the law made by the State Legislature shall prevail.?

14. Power to enact a law is derived by the State Assembly from List II of the Seventh Schedule of the Constitution. Entry 41 confers upon a State Legislature

the power to make ?State Public Services; State Public Services Commission?. Under this Entry, a State Legislature has the power to constitute State Public Services and to regulate their service conditions, emoluments and provide for disciplinary matters etc.. This power had not been in any case taken away by the enactment of the Articles 323 A and 323 B of the Constitution. As a notification under subsection (4) of Section 1 applying the Administrative Tribunal Act had not been issued, the State Legislature could have the power to enact on the matters covered by Entry 41 of List II of the Seventh Schedule. If an Act under Entry 41 had already been passed by the State Legislature, it would continue to have force and (be) applicable to all those who are covered by it. Article 323 A was merely an enabling provision and does not oust the jurisdiction of the Tribunals created by any other Act.

15. So far as the question of repugnancy argued by the learned counsel for the petitioner is concerned, we may mention that the question of repugnancy arises only when the two Acts have been passed by the Central and the State Legislature under an Entry made in the Concurrent List. A State law would be repugnant to the Union law when there is direct conflict between the two laws. Such repugnancy may also arise when such laws operate in the same field and the two cannot possibly stand together. For all such cases, the law made by the Parliament shall prevail over the State Law under Article 254 (1).

16. The decisions of the Supreme Court in *Zaverbhai v. State of Bombay*, AIR 1954 SC 752, *Tika Ramji v. State of U.P.*, AIR 1956 SC 676, *Deep Chand v. State of U.P.*, AIR 1959 SC 648, *Karunanidhi v. Union of India*, AIR 1979 SC 898 and *Hoechst Pharmaceuticals v. State of Bihar*, AIR 1963 SC 1019, have settled the legal position.

17. The guiding principles in those decisions are, in a nutshell, as follows :

- (i) whether there is direct conflict between the two provisions;
- (ii) whether Parliament intended to lay down an exhaustive code in respect of the subject matter replacing the Act of the State Legislature; and
- (iii) whether the law made by Parliament and the law made by the State Legislature occupy the same field.

18. The underlying principle is that the question of repugnancy arises when both the Legislatures are competent to legislate in the same field with respect to one of the matters enumerated in the Concurrent List and, therefore, Article 254 (1) cannot apply unless both the Union and the State Laws relate to a subject specified in the Concurrent List and they occupy the same field.

19. This being the position, there appears to be no legal basis for accepting the argument of the petitioner's counsel. Both the Central as well as the State Legislature have acted in law in exercise of the powers conferred on them and not in the same field.

20. Counsel for the petitioner relied upon the following decision for the submission that the U.P. Act stood impliedly repealed.

1. AIR 1963 SC 1561, Municipal Council, Palai v. T.I. Joseph.
2. AIR 1963 SC 976, Trust Mal Luchhmi Sailkoti Baradari v. Amritsar Improvement Trust.
3. AIR 1962 SC 745, Mathura Prasad and Sons v. State of Punjab.

The submission is untenable. Subject to constitutional restriction, the general rule is that the power of a legislative body to repeal a law is coextensive with its power to enact such a law. In the instant case, we have found above that the Administrative Tribunal Act does not apply to U.P. State as no notification under subsection (4) of Section 1 has been notified. Consequently, there is no question of repeal. The U.P. Act will apply as before the enactment of the Administrative Tribunal Act, 1985.

2. Relying on subarticle (3) of Article 323 A, counsel urged that the expression ? notwithstanding? indicates that irrespective of any thing, the U.P. Act had become redundant. He relies on the following cases for this proposition.

1. AIR 1964 SC 207: South India Corporation Pvt. Ltd. v. Secy. Board of Revenue.
2. AIR 1978 SC 851: Mohinder Singh Gill v. Chief Election Commissioner.
3. AIR 1952 SC 64: N.P. Poonuswami v. Returning Officer.
4. AIR 1955 SC 233: Hari Vishnu Kamath v. Ahmad Ishaque.

22. But the controversy, in the instant case, is not one which arose for decision in those cases. Subarticle (3) would, of course, have overriding effect but there is no occasion for applying that principle in the instant case.

23. Counsel next urged that this court should strike down Section 3 of the U.P. Public Services (Tribunals) Act, 1976 and give a direction to the State Government on the same lines as it was done by the Supreme Court in S.P. Sampat Kumar v. Union of India, AIR 1987 SC 386. There is a vital difference between the Administrative Tribunal Act and the U.P. Services (Tribunals) Act, 1976. Under the former Act, the High Court's jurisdiction under Article 226 and 227 has been completely excluded whereas the Tribunal created under the U.P. Public Services (Tribunals) Act are under the supervisory control of the High Court. Thus, the order or judgment passed by the Tribunal under the U.P. Public Services (Tribunals) Act can be challenged by means of a writ petition under Article 226 of the Constitution whereas that cannot be done as against a judgment of the Tribunal created under the Central Act. The Tribunal under the Central Act has been contemplated as a substitute and not as a supplement to the Act. Such is not the position in respect of the Tribunal under the U.P. Public Services (Tribunals) Act. Consequently, we cannot hold the provisions of subarticle (3) invalid on that ground. At this place, we may extract a portion of

the judgment of the Supreme Court, which deals with this controversy, in *S.P. Sampath Kumar v. Union of India*, AIR 1987 SC 386. The same is as under:

It must, therefore, be read as implicit in this constitutional amendment that the law excluding the jurisdiction of the High Court under Arts. 226 and 227 permissible under it must not leave a void but it must set up another effective institutional mechanism or authority and vest the power of judicial review in it. Consequently, the impugned Act excluding the jurisdiction of the High Court under Arts. 226 and 227 in respect of service matters and vesting such jurisdiction in the Administrative Tribunal can pass the test of constitutionality as being within the ambit and coverage of Cl. (2) (d) of Art. 323 A, only if it can be shown that the Administrative Tribunal set up under the impugned Act is equally efficacious as the High Court, so far as the power of judicial review over service matter is concerned. We must, therefore, address ourselves to the question whether the Administrative Tribunal established under the impugned Act can be regarded as equally effective and efficacious in exercising the power of judicial review as the High Court acting under Articles 226 and 227 of the Constitution.?

24. In the result, the writ petition fails and is rejected.