

(2012) 02 CAL CK 0046
In the Calcutta High Court
Case No : C.O.S.T. 3 of 2012

Mithu Mondal and ors

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 27-02-2012

Acts Referred:

Administrative Tribunals Act, 1985 — Section 22, 35(2), 36(c), 5, 5(1)
Central Administrative Tribunal (Procedure) Rules, 1987 — Rule 18, 18(c)
Constitution of India, 1950 — Article 227

Citation : (2012) 133 FLR 1027

Hon'ble Judges : Subhro Kamal Mukherjee, J; Nishita Mhatre, J

Bench : Division Bench

Advocate : Uttiya Ray, for the Appellant; Kalimuddin Mondal, Sougata Bhattacharya . C.O.S.T. 3 of 2012, Mr. Rabindra Narayan Dutta C.O.S.T. 4 of 2012, Mr. Jaytosh Majumder and Mr. Manas Kumar Sadhu C.O.S.T. 5 of 2012, for the Respondent

Final Decision : Allowed

Judgement

Subhro Kamal Mukherjee, J.—As similar questions of law and fact are involved in these applications under Article 227 of the Constitution of India, by consent of the parties, we take up all the three applications for hearing analogously.

2. The short question involved in these applications is whether the Chairman or any other member of the West Bengal Administrative Tribunal could exercise the jurisdiction, power and authority of the tribunal sitting singly.

3. The West Bengal Administrative Tribunal was constituted under the Administrative Tribunals Act, 1985.

4. Section 5 of the Administrative Tribunals Act, 1985 provides for composition of tribunals and benches thereof. Under sub-section (1) of Section 5 of the said Act, each tribunal shall consist of a chairman and such number of judicial and administrative members, as the appropriate Government may deem fit and, subject to other provisions of the said Act, the jurisdiction, powers and authority

of the tribunal may be exercised by benches thereof.

5. Sub-section (2) of Section 5 of the said Act provides that, subject to other provisions of the said Act, a bench shall consist of one judicial member and one administrative member.

6. Sub-section (6) of Section 5 provides that notwithstanding anything contained in the provisions of the said Section 5 of the said Act, it shall be competent for the chairman or any other member authorised by the chairman in this behalf to function as a bench consisting of a single member and exercise the jurisdiction, powers and authority of the tribunal in respect of such classes of cases or such matters pertaining to such classes of cases, as the chairman may by general or special order specify.

7. However, it was provided that if at any stage of hearing of any such case or matter, it appears to the chairman or such member that the case or matter is of such a nature that it ought to be heard by a bench consisting of two members, the case or matter may be transferred by the chairman or, as the case may be, referred to him for transfer to such bench, as the chairman may deem fit.

8. Section 22 of the said Act provides that the tribunal shall have power to regulate its own procedure.

9. The Central Government, in exercise of the powers conferred by clauses (d), (e) and (f) of sub-section (2) of Section 35 and clause (c) of Section 36 of the said Act, makes the Central Administrative Tribunal (Procedure) Rules, 1987. With the making of the said Rules, 1987, the Rules of 1985 was superseded.

10. The Central Administrative Tribunal thought it expedient to frame unified and consolidated rules of practice and, therefore, the Central Administrative Tribunal, in exercise of its power conferred u/s 22 of the said Act and all other powers thereunto enabling it to frame rules to regulate its own practice and procedure, make the Central Administrative Tribunal Rules of Practice, 1993 in supersession of all the existing orders, regulations and notifications on the subject.

11. Rule 18 of the said Rules of 1993 speaks of posting of cases for admission or orders before the bench. Under sub-rule (c) of Rule 18 of the said Rules of 1993, the category of cases specified in Appendix-I to the said Rules of 1993, as may be amended by the chairman from time to time, may, as far as possible, be posted before the single member bench and be dealt with according to the procedure prescribed therein.

12. The Appendix-I to the said Rules of 1993 is an order issued by the chairman of the Central Administrative Tribunal on December 18, 1991, inter alia, authorising all the member of the Central Administrative Tribunal to function as a bench consisting of a single member and exercise the jurisdiction, powers and authority of the tribunal in respect of classes of cases specified in the schedule to the said order with effect from January 1, 1992 subject to the following procedure :

(1)that the case does not involve validity of any statutory provision of interpretation of any of the provisions of the Constitution of India.

(2)that it is open to either party to submit to the single member, before the matter is taken up for admission or for final hearing, that it may be placed before a bench of two members. If such a request is made, at the outset, the single member shall direct that the case be placed before an appropriate bench of two members. Once the case is taken up, no such request shall be entertained at any subsequent stage of the proceedings for admission or final hearing, as the case may be.

13. The Constitutional Bench of the Supreme Court of India in *L. Chandra Kumar Vs. Union of India and others*, held that the observations of the Division Bench of the Supreme Court of *Amulya Chandra Kalita Vs. Union of India (UOI) and Others*, that under the scheme of the said Act all cases would be heard by a bench of two members was not correct. On the contrary, the observations of another bench in *Dr. Mahabal Ram versus Indian Council of Agricultural Research* reported in *Dr Mahabal Ram Vs. Indian Council of Agricultural Research and Others*, was approved by holding that the approach adopted in *Mahabal Ram (supra)* was correct, since it harmoniously resolved the manner in which sub-section (2) of Section 5 and sub-section (6) of Section 5 could operate together.

14. However, it was made clear that where a question involving the interpretation of a statutory provision or rule in relation to the Constitution of India would arise for the consideration of a single member bench of the Administrative Tribunal, the proviso to Section 5(6) would automatically apply and the chairman or the member concerned should refer the matter to a bench consisting of at least two members, one of whom must be a judicial member. This would ensure that questions involving the vires of a statutory provision or rule would never arise for adjudication before a single member bench or a bench, which did not consist of a judicial member. So constructed, Section 5(6) would no longer be susceptible to charges of unconstitutionality.

15. Therefore, when the effect or interpretation of a statutory provision or rule in relation to the Constitution of India arises for consideration before a single member bench, the proviso to sub-section (6) of Section 5 of the said Act will automatically apply and the chairman or the member concerned shall refer the matter to a bench consisting of at least two members, one of whom must be a judicial member.

16. The Supreme Court of India in *State of Madhya Pradesh versus B. R. Thakare and ors.*, (2002) 10 SCC 388 held that even assuming that all the powers of the tribunal could be exercised by a single member, it could only be by a judicial member of the tribunal and not any other member. The observation was made while interpreting an order issued by the chairman of the Madhya Pradesh Administrative Tribunal on August 27, 1993. By the said order, the chairman authorised the judicial member of the Madhya Pradesh Administrative Tribunal to

function as a bench consisting of a single member and to exercise the jurisdiction, powers and authority of the tribunal in respect of hearing including the final hearing of all types of cases within the jurisdiction of the tribunal. Therefore, the observations of the Supreme Court of India in the case of B. R. Thakare (supra) has to be read in the background of the said order dated August 27, 1993.

17. In the light of the provisions of the said Act, it is not correct to say that the Supreme Court of India held that the powers of the tribunal could, only, be exercised by a single member, who must be a judicial member of the tribunal and not by any other member.

18. In so far as the West Bengal Administrative Tribunal is concerned, there is no general or special order of the chairman specifying classes of cases or matters pertaining to such classes of cases to be dealt with by the chairman or any other member authorised by the chairman in this behalf to function as a bench consisting of a single member.

19. Admittedly, in exercise of the power conferred u/s 22 of the said Act of 1985, the West Bengal Administrative Tribunal has not framed any rule or practice.

20. In spite of our repeated asking, the State could not produce any general order or special order of the chairman specifying the classes of cases or matters to be dealt with by a single member.

21. Therefore, in the absence of fulfillment of the requirements, as provided under sub-section (6) of Section 5 of the said Act of 1985, the chairman or any other member of the West Bengal Administrative Tribunal is not competent to function as a bench consisting of a single member and exercise the jurisdiction, powers and authority of the tribunal.

22. The orders impugned in these applications under Article 227 of the Constitution of India are, therefore, set aside. The original applications are sent back to the tribunal for reconsideration by a bench consisting, at least, of two members.

23. The applications under Article 227 of the Constitution of India, thus, stand allowed without, however, any order as to costs.

Nishita Mhatra, J.

24. I agree.