

(1995) 03 MAD CK 0110
In the Madras High Court

P. Govindarajan

APPELLANT

Vs

R.A. Seetharam Das, Administrative Member, Tamil Nadu
Administrative Tribunal and Others

RESPONDENT

Date of Decision : 06-03-1995

Acts Referred:

Administrative Tribunals Act, 1985 — Section 28, 5(1), 5(2), 5(6)
Constitution of India, 1950 — Article 14, 15, 16, 226, 227

Citation : (1995) 2 MLJ 354 : (1995) WritLR 303

Hon'ble Judges : Jayasimha Babu, J

Bench : Single Bench

Judgement

Jayasimha Babu, J.—In view of the appointment of Sri Justice Pratap Singh, formerly Judge of this Court, as the Chairman of the Tamil Nadu Administrative Tribunal, it is no longer necessary to consider in depth as to whether these writ petitions should be entertained, as the common grievance in all the petitions arise out of the exercise of all the powers of the Tribunal by its Administrative Member who was functioning as a one man Tribunal, ever since the retirement of the Vice Chairman on 20th January, 1995.

2. While rejecting all these petitions without prejudice to the petitioner's right to challenge before the Supreme Court, the decisions rendered by the Administrative Member in matters heard/decided by him during the period he functioned as one man Tribunal (inter alia on the ground that the sole member could not have lawfully functioned as the Tribunal and exercised all its power, jurisdiction and authority), it is necessary to place on record the said state in which this Tribunal has had to function ever since its establishment in the year 1988, in the hope that atleast in future all those concerned with making appointments to this Tribunal will discharge their respective functions comprehensively and with expedition so as to enable the Tribunal to perform its valuable judicial functions in the manner intended to be done under the provisions of the Administrative Tribunals Act, 1985.

3. Though the Tribunal was set up to provide speedy justice to the vast body of civil servants and was vested with all the jurisdiction, powers and authority exercisable immediately prior to its constitution, by all courts, except the Supreme Court, in relation to recruitment and all service matters concerning inter alia, persons appointed to any civil service of the State or any civil post under the State, this Tribunal does not appear to have had for several years full complement of members provided for u/s 5(1) of the Act, namely, a Chairman, a Vice Chairman, a Judicial Member and an Administrative Member.

4. The Tribunal was without a Chairman from April, 1994 for a period of almost one year. The Tribunal has not had a judicial member apart from the Chairman for several years. Even now it does not have a separate judicial member and also does not have a Vice Chairman. Though, u/s 5(2) of the Act, matters are required to be heard by a Bench of atleast two members - one Administrative and the other Judicial - and the Constitution of a single member Bench u/s 5(6) was to be an exception, that exception has become the rule by reason of the reduced strength.

5. The failure to appoint a Judicial Member led to a situation where the quality of justice administered by the Tribunal was diluted but the functioning of two single member Benches neither of which had a judicial member and was without judicial expertise even when they sat together in a Bench - the Tribunal having consisted of a Vice Chairman who had no judicial experience, and an Administrative Member, from April, 1994 till 20th January, 1995. The safeguards envisaged by the Supreme Court in the case of *Dr. Mahabala Ram v. Indian Council of Agricultural Research* (1993) 7 S.L.R. 32, viz., that where questions of law and interpretation of constitutional provisions are involved, they should not be assigned to a single member, was completely ignored thereby compelling the civil servants to subject themselves to a forum which was not fully equipped to discharge the functions entrusted to it.

6. It is indeed a matter of great regret that judicial tribunal vested with powers to strike down statute and statutory rules concerning civil servants on grounds of violation of fundamental rights, should be allowed to have functioned in this manner. Such vast powers were not meant to be exercised by persons without any judicial expertise.

7. The Constitution Bench of the Supreme Court in the case of *S. P. Sampath Kumar v. Union of India* (1987) 1 S.L.R. 182 (S.C.), emphasised the judicial nature of the business transacted by the Tribunal, and observed:

It is necessary to bear in mind that service matters which are removed from the jurisdiction of the High Court under Articles 226 and 227 of the Constitution, and entrusted to the Administrative Tribunal set up under the impugned Act, for adjudication involves questions of interpretation and applicability of Articles 14, 15, 16 and 311 in quite a large number of cases. These questions require for their determination not only judicial approach but also knowledge and expertise

in the particular branch of constitutional law. It is necessary that those who adjudicate upon these questions should have some modicum of judicial training and judicial experience because we find that some of those questions are so difficult and complex that they baffle the minds of even trained judges in the High Court and Supreme Court.

8. Having regard to the judicial nature of the functions discharged by the Tribunal and its importance, the Supreme Court in the case of *Dr. Mahabala Ram v. Indian Council of Agricultural Research* (1993) 7 S.L.R. 32, after referring to the Proviso to Section 5(6) of the Act, observed:

In fact, the proviso itself indicates Parliament's concern to safeguard the interests of claimants by casting an obligation on the Chairman and Members who hear the cases to refer to a regular Bench of the two members such cases which in their opinion require to be heard by a Bench of two members.

9. Section 5(2) of the Act stipulates that a Bench shall consist of one Judicial Member and one Administrative Member. Section 5(1) of the Act envisages atleast two Benches each consisting of a Judicial and Administrative Member-the Chairman and Vice Chairman being regarded as such member depending upon their qualifications - being functional at any given point of time.

10. The Administrative Tribunals Act does not contemplate or permit a sole member to assume to himself the entire jurisdiction, powers and authority of the Tribunal. And yet, by the failure of those concerned with making appointments to the Tribunal to act well in time, such a situation was allowed to come to pass. Between 21st January, 1995 and the date on which the newly Chairman took charge, the sole member who was the Administrative Member, and who was neither qualified to be nor was designated as Vice Chairman or Chairman, assumed such powers by relying on doctrines of necessity and inherent power. It is sufficient to observe that the doctrine of necessity is not a doctrine providing for assumption of additional jurisdiction and power, but is only intended to enable an adjudicator who would otherwise be disqualified by reasons of bias and the like, to continue to function as adjudicator, for lack of any other duly empowered adjudicator. Inherent powers referred to in a rule made under the statute cannot provide a justification for committing breach of the provisions of the statute under which the rule was made.

11. The State Government which has to initiate the proposals is primarily responsible for ensuring that the Tribunal is at all times constituted in the manner intended by the Act and one hopes that atleast now, adequate and timely attention will be paid to making appointments to the Tribunal and that a Vice Chairman as also a Judicial Member will be appointed without any further delay.

12. This Court cannot adjudicate on service matters of State or Central Government servants by reason of Section 28 of the Administrative Tribunals Act and Article 323-A of the Constitution. This Court however can examine the

Constitution of the Tribunal to determine whether it has been constituted in accordance with the Act and can also issue writs of quo warranto to persons who exercise the powers of the Tribunal if their appointments are not in accordance with law. Members of the Tribunal hold public offices and are subject to this Court's jurisdiction in relation to the legality of such appointment. Such members do not hold civil posts under the State or Central Government nor are they members of civil service of the State or the Union. The rejection of these petitions therefore is not to be construed as rejection on the ground of maintainability except W.P. No. 2451 of 1995 wherein an interim order made in a matter pending before the Tribunal has been challenged.

13. Besides the counsel for the petitioner Mr. N.S. Sivam, Mrs Muthukumarasami, the Government Pleader Mr. N.R. Chandran, formerly a Member of the Central Administrative Tribunal and now Senior Counsel, Mr. S. Vadivelu, Mr. C. Selvaraju, Mr. Srinivasa Raghavan and others assisted the Court by addressing arguments and citing numerous authorities a list of which is enclosed to this order. Mr. Venkataraman, a former member of the Central Administrative Tribunal made written submissions. Their valuable assistance is greatly appreciated.