
(2010) 10 AHC CK 0395
In the Allahabad High Court
Case No : Special Appeal No. 1756 of 2010

Process and Product Development Centre Employees Association and Others APPELLANT

Vs

Government of India and Others RESPONDENT

Date of Decision : 28-10-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 14(2), 5(6)
Central Administrative Tribunal (Procedure) Rules, 1987 — Rule 4(5)
Constitution of India, 1950 — Article 14, 16, 226, 227

Citation : (2011) 1 UPLBEC 266

Hon'ble Judges : Ferdinoinacio Rebello, C.J;A.P. Sahi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Ferdino Inacio Rebello, C.J. and A.P. Sahi, J.—The Appellants are in appeal against the order dated 30th September, 2010, whereby the learned Single Judge was pleased to hold that the writ Court exercising jurisdiction under Article 226/227 of the Constitution of India would not have jurisdiction to entertain the petition preferred by the Appellants and the remedy for the Appellants will be to approach the Central Administrative Tribunal (CAT).

2. At the hearing of this appeal, on behalf of the Appellants, learned Counsel submits that the issue of vires of a notification cannot be gone into by the CAT, as it is an existing condition of service and consequently, it was open to the Association of Employees to have moved this Court in the exercise of its extraordinary jurisdiction.

3. On the other hand, on behalf of the Respondents, learned Counsel has drawn our attention to Rule 4 (5) of the Rules framed under the Administrative Tribunals Act, 1985 (hereinafter referred to as "the Act, 1985"), which are known as the Central Administrative Tribunal (Procedure) Rules, 1987 (hereinafter referred to as "the Rules, 1987") as also to the judgments of the Supreme Court

in *L. Chandra Kumar Vs. Union of India and others*, and *Kendriya Vidyalaya Sangathan and Anr. v. Subhash Sharma* reported in (2002) 4 SCC 145 . In answer to that, on behalf of the Appellants, learned Counsel has drawn our attention to the judgment of the Supreme Court in *P.U. Joshi and Others Vs. The Accountant General, Ahmedabad and Others*,

4. We have heard learned Counsel for the parties.

5. At the outset, we may only reproduce Rule 4 (5) of the Rules, 1987, which reads as follows:

4.(5) (a) Notwithstanding anything contained in sub-rules (1) to (3) the Tribunal may permit more than one person to join together and file a single application if it is satisfied, having regard to the cause and the nature of relief prayed for that they have a common interest in the matter.

(b) Such permission may also be granted to an Association representing the persons desirous of joining in a single application provided, however, that the application shall disclose the class/grade/ categories or persons on whose behalf it has been filed [provided that at least one affected person joins such an application].

6. It would thus be clear that once several persons can come together for filing an application before the CAT, a representative body like an Association of Employees, will also have a right on behalf of such employees to raise their disputes before the CAT. In that case, it is, therefore, clear that the Appellants are the proper persons to have moved this Court for the relief as sought for by them on behalf of the employees working with the Respondents.

7. The question, that we are really called upon to answer, is as to whether it is open to the CAT to consider the vires of the notification which has been challenged before us. In our opinion, the issue is no longer *res integra*. We may first refer to paragraph 93 of the judgment of the Supreme Court in *L. Chandra Kumar* (*supra*), which reads as under:

93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional set-up, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunal will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such

cases alone, the High Court concerned may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the tribunals will, however, continue to act as the only Courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

8. The case of L. Chandra Kumar (*supra*) thereafter was considered by another Division Bench of the Supreme Court in *Kendriya Vidyalaya Sangathana and Anr.* (*supra*). Paragraphs 11 and 12 of the said judgment are relevant for the purpose, which read as under:

11. To appreciate the second submission of Mr. Ahmed, we extract below relevant portions from paragraphs 93 and 99 of the decision of the Constitution Bench of this Court in L. Chandra Kumar case: (SCC pp. 309 & 311, Paras 93 & 99)

93... We may add that the Tribunals will, however, continue to act as the only Courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

99... It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicted.

12. The Constitution Bench of this Court has clearly held that Tribunals set up under the Act shall continue to act as the only Courts of first instance "in respect of areas of law for which they have been constituted". It was further held that it will not be open for the litigants to directly approach the High Court even in cases where they question the vires of statutory legislation (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned.

9. It would thus be clear from the reading of these paragraphs that even a challenge to the vires of the statutory legislation/subordinate legislation/administrative action could also be examined by the CAT by virtue of Section 14 of the Act, 1985.

10. We may now refer to the judgment of P.U. Joshi (supra). Paragraph 10 of the said judgment, to which our attention was invited, if read in correct perspective, would only mean that it is the State, which can prescribe the provisions for constitution, pattern, nomenclature of posts, cadres, categories, creation/abolition, prescription of qualifications and other conditions of service etc. and, therefore, it is within the jurisdiction of the State to amend or vary the conditions of service. An alteration/amendment and/or variation in the conditions of service to that effect, would not be violative of Articles 14 and 16 of the Constitution of India. The issue, which is before us and was considered by the Supreme Court in L. Chandra Kumar (supra), was not directly an issue in the case of P.U. Joshi (supra). Considering that, in our opinion, the judgment of P.U. Joshi (supra) would have to be understood in the context of what it dealt with.

11. We may also point out that by a specific notification dated 25.10.2007, at serial No. 81 of the notification, Respondent No. 4 has been notified as one of the Bodies/Corporations owned and controlled by the Central Government by virtue of powers conferred by Sub-section (2) of Section 14 of the Act, 1985.

12. Considering the above, we find no merit in this appeal. It is accordingly, dismissed. No order as to costs.