

(2001) 04 AP CK 0059

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11566 of 2000

R. Bhaskara Rao and Another

APPELLANT

Vs

Hyderabad Metropolitan Water Supply and Sewerage Board,
Hyd. and Others

RESPONDENT

Date of Decision : 09-04-2001

Acts Referred:

Administrative Tribunals Act, 1985 — Section 12, 15, 18, 35, 36
Constitution of India, 1950 — Article 141, 226, 227, 323
General Clauses Act, 1897 — Section 3, 3(31)

Citation : (2001) 3 ALD 289 : (2001) 3 ALT 88

Hon'ble Judges : Ghulam Mohammed, J;B. Subhashan Reddy, J

Bench : Division Bench

**Advocate : S. Ramachandra Rao, for L. Ravichander, for the Appellant;
Government Pleader, for Medical and Health E. Manohar, for Mr. M. Surender Rao,
Mr. J.R. Manohar Rao and M. Ratna Reddy, for the Respondent**

Judgement

B. Subhashan Reddy, J

1. The two petitioners in this writ petition are aggrieved by their not being promoted to the post of Deputy General Manager (Engineering). The writ petition has been filed directly in the High Court without the intervention of the Andhra Pradesh Administrative Tribunal. Petitioners plead that since they are challenging the very provisions of the Administrative Tribunals Act, 1985 (hereinafter referred to as "the Tribunals Act") as also its inapplicability, they need not resort to alternative remedy. Reliance is placed on the judgment of the Supreme Court in L. Chandra Kumar Vs. Union of India and others, .

2. The complaint of the petitioners is that even though they are borne on the cadre of the service of Hyderabad Metropolitan Water Supply and Sewerage Board (hereinafter referred to as "the Board"), their claims for promotion from the posts they are holding viz., Manager (Engineering) to the posts of Deputy General Manager (Engineering) are being ignored and the personnel from the

A.P. Public Health and Municipal Engineering Service are being drawn and preferred for appointment to that post, even though the said personnel borne on the cadre under A.P. Public Health and Municipal Engineering Service are Government servants and have not been either regularised or absorbed into the service of the Board.

3. Mr. S. Ramachandra Rao, the learned senior Counsel appearing for the petitioners raised the following contentions:

(i) As the petitioners are directly recruited in the Board's service and completed probation are entitled for promotion to the posts of Deputy General Manager, which is the senior post to the post of Manager (Engineering) which they are holding and not the impleaded respondents.

(ii) The Board is not the local authority and the definition of "local authority" is Section 3(31) of General Clauses Act is inapplicable for the cause espoused for promotion and that the said definition cannot be imported into the Tribunals Act.

(iii) Insofar as the State of Andhra Pradesh is concerned, Administrative Tribunal can be constituted for service matters only under Article 371-D of the Constitution and not under the Tribunals Act.

(iv) As there is no Chairman appointed to the Tribunal and the present Chairman is an Acting Chairman being from Administrative Service and not being a Judge or former Judge of the High Court, it cannot be said that there is a validly constituted Tribunal so as to drive the petitioners to avail the remedy before the Tribunal at the first instance; and

(v) The petitioners also need not resort to Tribunal's remedy as the very constitutional validity of Sections 5, 6, 8, 12, 15(2), 18, 35 and 36 of the Tribunals Act are challenged and the High Court is the only forum to adjudicate on the same.

4. Mr. E. Manohar, the learned senior Counsel appearing for the respondents raises a preliminary objection as to the maintainability of this writ petition because of the dicta laid down by the Supreme Court in *L. Chandra Kwnar v. Union of India* (supra). It is needless to mention that a further hearing as to the merits of plea regarding the service conditions and the entitlement of the petitioners for promotion in preference to the inpleaded respondents has to be gone into depending upon the issue of maintainability of this writ-petition without the intervention of the Administrative Tribunal.

5. Similar plea was raised in Writ Petition Nos.8411 and 8412 of 2000 and a learned single Judge of this Court by its judgment dated 30-6-2000 dismissed the writ petitions as not maintainable accepting the plea that the Tribunal has to be approached first and the judicial review by the High Court can only be the next, if an adverse order is passed. It is stated that the Writ Appeal Nos.824 and 831 of 2000 are pending against the said judgment of the learned single Judge. But, the said writ appeals have not been posted along with this writ petition and

both the learned senior Counsel have argued afresh to decide the controversy raised and as stated above, we have to now resolve first the maintainability of this writ petition in the context of the legal principles enunciated by the Supreme Court in *L. Chandra Kumar v. Union of India* (supra).

6. Before the advent of Administrative Tribunals, the service jurisdiction was within the realm of the High Courts which were exercising -power of judicial review under Articles 226 and 227 of the Constitution of India. Firstly, the Administrative Tribunal was constituted in the State of Andhra Pradesh by virtue of the provisions contained in Article 371-D of the Indian Constitution which was inserted by Constitution (32nd Amendment) Act, 1973. Parliament thought it fit to constitute Administrative Tribunals both for Central and State services and to pave the way, had enacted Constitution (Forty-Second Amendment) Act, 1976 whereby Article 323-A was inserted. The said Article empowers the Parliament to enact a law creating a separate judicial forum to resolve the disputes regarding service matters. Administrative Tribunals Act, 1985 is one of such Acts in that direction. The validity of the said Constitution provision and the Tribunals Act came to be questioned in several High Courts as also in Supreme Court directly and all the matters were consolidated and were heard by the Supreme Court and by judgment dated 9-12-1996, the Constitution Bench of the Supreme Court in *S.P. Sampath Kumar v. Union of India* AIR 1987 SC 386, upheld the constitutional validity of the Constitution Amendment Act and consequently Article 323-A as also the creation of the Tribunals explaining that the basic structure of the Constitution is not violated merely because the power of judicial review of the High Courts in service matters is taken away, as it is entrusted to an alternative judicial mechanism i.e., the Tribunals and made some suggestions to make the said alternative judicial mechanism an effective forum. But, the litigation did not stop there and again the constitutional validity of Article 323-A and the resultant Tribunals Act were questioned and in the second round, the Supreme Court in *L Chandra Kumar v. Union of India* (supra) has deviated from the stand taken in *S.P. Sampath Kumar's* case (supra) holding that the Tribunals constituted under the Tribunals Act cannot be called alternative judicial mechanism and they can only supplement the jurisdiction of the High Courts under Articles 226 and 227 and cannot supplant the said constitutional remedies. But, the Supreme Court had ruled that the High Court cannot entertain the writ petitions directly even if the legislative action is questioned and that power of judicial review by the High Court can be exercised only after the exercise of the powers by the Administrative Tribunals and not at the first instance. But, Mr. S. Ramachandra Rao would argue that once the power of the High Courts of their judicial review under Articles 226 and 227 of the Constitution of India are recognised and have held to be inviolable, it is for the High Courts to decide in the circumstances of each case, as to whether the alternative remedy should be resorted to and that the Supreme Court cannot impose such restrictions by judgment, as the source of power of judicial review in the High Courts under Articles 226 and 227 is the Constituent Assembly and as the said power of

judicial review conferred under Articles 226 and 227 of the Constitution on the High Courts is a basic structure of the Constitution, the same is unalterable. But, the Supreme Court was alive to the situation and ruled that because of the docket explosion and to save time, the Tribunals should act as the Courts of first instance to deal with matters effectively and only then power of judicial review can be exercised by the High Courts under Articles 226 and 227 of the Constitution of India, so as to only see as to whether the decision-making process of the Tribunal is valid or not. Article 141 of the Indian Constitution has been enacted keeping in view the principle of consistency in judicial precedents and enunciation of legal principles by the Supreme Court while interpreting a statute is a stare decisis and is a law of the land under Article 141 of the Indian Constitution. No doubt, Articles 226 and 227 confer power of judicial review on the High Courts, but as to how the power of said judicial review should be exercised in service matters is formulated and modulated by the Supreme Court in L. Chandra Kumar's case (supra) and that is the law holding the field on the subject and it is not permissible to rake-up that issue again and again and more so, when- the matter decided by a Division Bench of this Court in Muthineni Krishna Rao and others Vs. Union of India and Others, , is pending before the Supreme Court for adjudication. Now, it is for the Apex Court to dwell on that subject and not for this Court.

7. Section 15 of the Tribunals Act deals with the jurisdiction, powers and authority of State Administrative Tribunals. While sub-section (1) thereof brings the persons holding civil posts under the State automatically within the purview of the Tribunals Act and for adjudication of their service problems by the Administrative Tribunal, sub-section (2) empowers the State Government to rope-in the personnel working in local or other authorities and Corporations or Societies controlled or owned by the State Government. This can be done by the Government by a notification as and when it deems proper to do so. When such a notification is issued, the said staff working with the said authorities are subjected to the jurisdiction of the Administrative Tribunal and that is clearly provided in sub-section (3) thereof. It is apt to extract sub-sections (2) and (3) of Section 15:

(2) The State Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of subsection (3) to local or other authorities and Corporations or Societies controlled or owned by the State Government:

Provided that if the State Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of, or different categories under any class of, local or other authorities or Corporations or Societies.

(3) Save as otherwise expressly provided in this Act, the Administrative Tribunal for a State shall also exercise, on and from the date with effect from which the

provisions of this sub-section apply to any local or other authority or Corporation, or Society all the jurisdiction, powers and authority exercisable immediately before the date by all Courts except the Supreme Court in relation to-

(a) recruitment, and matters concerned recruitment, to any service or post in connection with the affairs of such local or other authority or Corporation or Society; and

(b) all service matters concerning a person other than a person referred to in clause (b) of sub-section (1) of this section or a member, person or civilian referred to in clause (b) of subsection (1) of Section 4 appointed to any service or post in connection with the affairs of such local or other authority or Corporation or Society and pertaining to the service of such person in connection with such affairs.

While the society is defined in Section 3(rr), the local authority or Corporation is not defined in the Tribunals Act. We are not now concerned with the Corporation, but concerned with the local authority. As the Administrative Tribunals Act did not define the word "local authority", we have to resort to the definition in General Clauses Act. General Clauses Act, 1897 defines "local authority" in sub-section (31) of Section 3, which is to the effect:

"local authority" shall mean a municipal, committee, district board, body of port Commissioners or other authority legally entitled to, or entrusted by the Government with, the control of management of a municipal or local fund;"

This word was elaborately dealt with by J. Chelameswar, J., in WP Nos.8411 and 8412 of 2000. Relying upon a judgment of the Supreme Court in the case of Union of India (UOI) and Others Vs. Shri R.C. Jain and Others, , the learned Judge held that the Board falls within the local authority as interpreted by the Supreme Court in the said case. We concur with the view of the learned Judge, as the Board is entrusted under the statute, namely, The Hyderabad Metropolitan Water Supply and Sewerage Act, 1989, with the functions of providing civic amenities to the inhabitants of the Hyderabad metropolitan area, which is defined in Section 2(f) thereof to mean the area of the Hyderabad Urban District including such other areas adjacent thereto as the Government may by notification from time to time specify. The services which the Board render relate to water and sewerage and as such, the Board fits within the definition of "local authority". The Board comprises of the Chief Minister as Ex-officio Chairman, Municipal Administration Minister as Ex-officio Vice-Chairman and Secretary to Government, Housing, Municipal Administration and Urban Development Department, Secretary to Government, Finance Department, Secretary to Government, Irrigation Department, Commissioner, Municipal Corporation of Hyderabad, Chairman, Andhra Pradesh State Pollution Control Board and the Director, Medical, Health and Family Welfare Services as Ex-officio Directors. The other Directors are; (i) Chief Engineer of the Board to be appointed by the Government; (ii) one person nominated by the Government of the rank of

Additional Accountant-General], drawn from either IA & AS or any financial institution or a Chartered Accountant with not less than 20 years of experience in the field of Finance and Accounts; and (iii) one person of the IAS cadre to be nominated by the Government to act as a Managing Director, Section 9 obligates the Board to submit annual financial statements to the Government as also supplementary statements as and when necessary. Section 10 places restriction on unbudgeted expenditure and the Government has to be informed of such expenditure. Section 11 empowers the Government to make subventions to the Board and also advance loans. Section 12 places restriction on the Board to borrow amounts only with the previous sanction of the Government. u/s 13, the Government guarantees the payment of the principal and interest of loans raised by the Board. The Government appoints a person to audit the accounts of the Board u/s 16 and such audit report has to be submitted by the Board to the Government and the Government is empowered to issue instructions basing upon the said audit report and the Board is duty bound to comply the said restrictions. u/s 15, the Board has to make regulations regarding water supply, but only with the previous approval of the Government. Section 78 obligates the Board to submit annual reports upon such matters as may be so prescribed by the Government by regulations. Those may include the activities of the Board during the previous financial year and the report thereof and the activities to be undertaken by the Board in the next financial year and the Government is obliged to place such report before the Legislative Assembly soon after the receipt of the same. The Board is also obligated to furnish the Government at such times and in such form and manner as the Government may direct such statistics and returns and such particulars in regard to any proposed or existing scheme, as the Government may from time to time require. u/s 79, the Government is empowered to make rules for carrying out the purposes of the Act. u/s 80, the Board can make regulations regarding:

- (a) The administration of the funds and other property of the Board and the maintenance of its accounts;
- (b) The summoning and holding of meetings of the Board and the times and places at which such meetings shall be held, and the conduct of business thereat and the number of Directors necessary to constitute a quorum;
- (c) The duties of officers and employees of the Board and their salaries, allowances and other conditions of service;
- (d) The fine which may be imposed for the breach of any bye-law, which may extend to one thousand rupees, and in case of continuing breach with the additional fine which may extend to one hundred rupees for every day, during which the breach continues after receipt of a notice from the Board to discontinue the breach;
- (e) The procedure to be followed by the Board in inviting, considering and accepting tenders; and

(f) Any other matter arising out of the Board's functions under this Act, in which it is necessary or expedient to make regulations.

But the said regulations can be made only with the previous approval of the Government. The Government makes a policy decision u/s 81 and basing on the same, directions are issued to the Board and the Board shall be guided by such directions in the discharge of its functions. Section 110 makes the Managing Director as the Chief Controlling Authority in respect of matters relating to the administration of all the functions under the Act and he can delegate some of the functions to such officer of the Board as he deems fit and proper. Section 114 makes members, officers and employees of the Board to be public servants. A survey of the above provisions of the Hyderabad Metropolitan Water-Supply and Sewerage Act, 1989 makes it abundantly clear that the Board is under the effective control of the Government, leaving no doubt that the Board comes within the ambit of the local authority" under the control of the Government. Indisputably, the functions discharged by the "Board" were hitherto being performed by the Municipal Corporation of Hyderabad and adjoining local bodies like Municipalities and Gram Panchayats. G.O. Ms. No.652, General Administration Department, dated 11-11-1989 has been issued by the Government in exercise of the powers conferred by Section 2 of Section 15 of the Tribunals Act making Section 15(3) of the Tribunals Act applicable to the local authorities under the control of the State Government. Hence, we hold that the Board is a local authority and the service disputes have to be settled at the first instance by the A.P. Administrative Tribunal.

8. Coming to the validity of the constitution of the Administrative Tribunal under the Tribunals Act, no doubt, the erstwhile Tribunal was constituted by virtue of the provisions contained under Article 371-D of the Constitution of India. But, sub-clause (8) of Article 371-D empowered the President to abolish the Tribunal and in exercise of the said provision, notification was issued on 25-10-1989 by the Government of India and the same was republished in A.P. Gazette under G.O. Ms. No.605, General Administration Department, dated 31-10-1989 and it is apt to extract the same:

"General Administration (SPF.B) Department

G.O. Ms. No.605

dated 31-10-1989

Read the following:-

From the Govt. of India, Ministry of Home Affairs, New Delhi, Order No.S-21013/13/87-SR, dated: 25-10-1989.

Order:

The following notification of Government of India, Ministry of Home Affairs, Order No.S-21013/13/87-SR, dated 25-10-1989, shall be re-published in the

extraordinary issue of the Andhra Pradesh Gazette, dated 31-10-1989.

NOTIFICATION

No.S-21013/13/87-SR Government of India/Bharat Sarkar, Ministry of Home Affairs/Grih Mantralaya, New Delhi, the 25-10-1989.

ORDER

GSR 920(E) in exercise of the powers conferred by clause (8) of Article 371-D of the Constitution, the President, being satisfied that the continued existence of the Andhra Pradesh Administrative Tribunal constituted under paragraph 3 of the Andhra Pradesh Administrative Tribunal Order, 1975, issued under clauses (3) and (4) of the said article, is not necessary, hereby abolishes the said Tribunal with effect from the 1st November, 1989, and directs that every case or other proceeding pending before the said Tribunal immediately before that date together with the records thereof shall stand transferred on that date to the Andhra Pradesh Administrative Tribunal established under sub-section (2) of Section 4 of the Administrative Tribunals Act, 1985 (13 of 1985), and the said Tribunal may proceed to deal with such case or other proceeding, so far as may be, in the same manner as in the case of an application u/s 19 of that Act, from the stage which was reached before such transfer or from any earlier stage or de novo as the Tribunal may deem fit.

(NoS-21013/13/87-SR)

By Order and in the name of President.

Sd/ x x x x

(A.K. Verma)

Joint Secretary to Govt. of India".

Consequent to the said abolition of the Tribunal constituted under Article 371-D, the present Tribunal has been constituted vide notification of the Central Government dated: 26-10-1989 which reads:

" In exercise of the powers conferred by sub-section (2) of Section 4 of the Administrative Tribunals Act, 1985 (13 of 1985), the Central Government on receipt of a request in this behalf from the Government of Andhra Pradesh, hereby establishes the Andhra Pradesh Administrative Tribunal with effect from the 1st day of November, 1989 which shall be the "appointed day" within the meaning of clause (c) of Section 3 of the Act."

Hence, we do not find anything wrong in the constitution of the present Tribunal.

9. Coming to the next argument of Mr. S. Ramachandra Rao, regarding improper composition of the Tribunal, now that the Administrative Member is no more the Acting Chairman and the Judicial Member who is the Vice-Chairman is the Acting Chairman, we do not see any infirmity in the functioning of the Tribunal. The Act

itself provides that in the absence of a regularly appointed Chairman, the Vice-Chairman can be the Acting Chairman. Hence, this contention is rejected.

10. Coming to the last contention that alternative remedy is no bar, as the constitution validity of the statutory provisions of the Act itself is challenged and that even according to the dicta laid down by the Supreme Court in *L Chandra Kumar v. Union of India* (supra), this writ petition can be directly entertained by this Court without the intervention of the Tribunal. The said statutory provisions were already tested by a Division Bench of this Court in *M. Krishna Rao v. Union of India* (supra) and the same cannot be entertained time and again by a co-ordinate Division Bench.

11. For all the reasons mentioned supra, this writ petition is not maintainable and the petitioners have to approach the Andhra Pradesh Administrative Tribunal first, if they want to espouse their cause further, in view of the dicta laid down by the Supreme Court in *L Chandra Kumar v. Union of India* (supra). In view of that, we are not dealing with the first contention centering round the promotion of the petitioners to the post of Deputy General Manager.

12. The writ petition is, thus, dismissed as not maintainable. No costs.