
(1994) 02 AHC CK 0058

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 8248 of 2002

Shambhu Dayal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 01-02-1994

Acts Referred:

Administrative Tribunals Act, 1985 — Section 6(2)
Constitution of India, 1950 — Article 50

Citation : (1994) 02 AHC CK 0058

Hon'ble Judges : M.Katju, J and Rakesh Tiwari, J

Final Decision : Disposed Of

Judgement

M. Katju, J.—Heard Sri V.B. Singh and Sri P.S. Baghel, learned Counsel for the petitioner, Sri A.K. Singh, learned Counsel for Union of India, Sri Shashi Nandan, learned Counsel for Respondent No. 4 and Sri Navin Sinha and Sri Anurag Khanna, learned Counsel for Respondent No. 5. We have also heard Mr. Chandra Shekharan, learned Counsel who has filed an affidavit on behalf of Smt. Lakshmi Swaminathan, Vice Chairman (Judl.), Central Administrative Tribunal, Principal Bench, New Delhi.

2. The point raised in this case is a matter of great moment. The question involved is whether the Presiding Judge of the Central Administrative Tribunal in India can be a member from the purely executive wing of the State. We are of the opinion that he cannot, and that is why we are giving a detailed judgment as this matter is of great legal and constitutional importance in our country.

3. The petitioner has challenged the panel prepared for the posts of Vice Chairmen in various branches of the Central Administrative Tribunal in India and he has prayed for preparation of a fresh panel.

4. In this case on 2522002 we passed the following interim order :

?Heard Sri V.B. Singh, learned Senior Advocate and Sri P.S. Baghel Advocate for the petitioner and learned Counsel for the Central Government.

Learned Counsel for respondents prays for and is granted 3 weeks to file counteraffidavit.

Issue notice to Respondent Nos. 4, 5 and 6 returnable at an early date. List peremptorily on 2432002 on which date the petition may be finally disposed off."''

The petitioner has prayed for quashing the panel prepared for the post of Vice Chairman in various benches of the Central Administrative Tribunal (hereinafter referred to as CAT).

Section 6(2) of the Administrative Tribunal Act, 1985 states :

?A person shall not be qualified for appointment as the Vice Chairman unless he is or has been (or is qualified to be) a Judge of a High Court, or

(a) has, for atleast two years, held the post of a Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of a Secretary to the Government of India ; or

(b) has for atleast five years, held the post of an Additional Secretary to the Government of India or any other post under the Central or a State Government carrying a scale of pay which is not less than that of an Additional Secretary to the Government of India ; or

(c) has, for a period of not less than three years, held office as a Judicial Member or an Administrative Member.?

At first glance a perusal of the above provision gives the impression that even a Secretary or Additional Secretary to the Government of India can be appointed as Vice Chairman. However, we are of the opinion that Section 6(2) cannot be read in isolation but it must be read alongwith Article 50 of the Constitution, which states :

?Separation of judiciary from executive.The State shall take steps to separate the judiciary from the executive in the public services of the State.?

The object of Article 50 of the Constitution was that there should be separation of the judiciary from the executive so that there may be an independent judiciary in which alone the public can have confidence. This view is also supported by the decision of the Supreme Court in *State of Maharashtra v. Labour Law Practitioner's Association and others*, AIR 1998 SC 1233.

In our prima facie opinion the Vice Chairman of CAT can only be a sitting or retired High Court Judge or an Advocate who is qualified for appointment as a High Court Judge.

A person who has been in executive service for 20 to 30 years naturally develops a proexecutive approach and his thinking process becomes coloured thereby. However, since the CAT is a judicial body that has to decide judicial matters it must function as an independent body, as that alone can inspire the confidence of the public. A person who comes from a legal background has an independent

mind, whether he is or has been a High Court Judge or an Advocate having more than 10 years practice.

We are not expressing any opinion on the point whether a member of the Tribunal should also be a person with a legal background. However, we are certainly of the opinion that the Vice Chairman must be a person with a legal background since the person who presides over a bench must inspire confidence in the public. The very object of Article 50 will be subverted, in our opinion, if the Presiding Officer is a person from the executive. The Directive Principles in the Constitution cannot be treated as merely ornamental, as held by the Supreme Court in *Keshavananda Bharti v. State of Kerala*, 1973 (4) SCC 225; *Minerva Mills v. Union of India*, 1980 SC 1789 and *Unnikrishnan v. State of A.P.*, 1993 SC 2178. In our opinion the persons who have been Secretary or Additional Secretary of the Government of India can only be appointed as Vice Chairman in exceptional circumstances if no persons with a legal background as mentioned in clause (a) of Section 6(2) is available, and even in this situation such appointment can only be a stop gap arrangement for a short period till the person mentioned in Clause (a) of Section 6(2) become available.

We make it clear that we are not making any derogatory comment on members of the executive, many of whom are doing their duty excellently and honestly. We are only concerned with the confidence of the public in the judiciary, which is only possible if the judiciary is not only independent but also appears to be independent.

In the circumstances we direct that in the panel which has been prepared for appointment of Vice Chairman of various Benches of CAT, and in future panels also, only the persons referred to Section 6(2)(a) can be appointed as the Vice Chairman of the various benches of the CAT.

Let a copy of this order be communicated forthwith by the Registrar General of this Court as well as the learned Counsel for the Central Government to the Union Law Secretary, New Delhi and Chairman of the CAT, New Delhi. The petitioner may also communicate it to the appropriate authorities.

Let a copy of this order may be given to the Counsel for the parties on payment of usual charges today.

5. Thereafter on 632002 we passed the following interim order :

?This writ petition had been ordered to be listed on 2432002, but it appears that day is a Sunday. Hence we direct that this writ petition be listed on 242002.

We further direct the Chairman, Central Administrative Tribunal, New Delhi to serve copies of the writ petitions and notices to all the Vice Chairman of the various benches of the Tribunal who were Secretary or Additional Secretary to the Government of India i.e. who come from the Executive side. We feel this order would be in the interest of justice because the petitioner may not be able to get the names and addresses of such persons and hence it would be

convenient if the Chairman, Central Administrative Tribunal, New Delhi is directed to serve all such Vice Chairman by special messenger including Respondent Nos. 4, 5 and 6.

Copy of this order will be given to the learned Counsel for the parties on payment of usual charges within 24 hours and learned Counsel for the petitioner will communicate this order by courier service/speed post service to the Chairman, Central Administrative Tribunal, New Delhi alongwith sufficient copies of the petition.

This order may also be communicated by the learned Counsel for the Central Government to the Chairman, Central Administrative Tribunal, New Delhi.

We make it clear that all the Vice Chairman of the Central Administrative Tribunal in various benches who are from Executive side will be deemed to be respondents in this case and they may appear themselves or through Counsel on 2nd April, 2002 on which date the petition will be finally disposed off. Such Vice Chairman should show cause why their appointments be not quashed.

List before us on 242002.?

6. This case was listed before us on 242002 on which date it was adjourned to enable the parties to exchange any further affidavits, if they so wanted.

7. The independence of judiciary and the confidence of the public in the judiciary is of supreme importance if democracy is to survive in our country. This is because it is in the very nature of things that in every society there are some disputes between the people inter se and between the people and the State. Hence there has naturally to be a forum, which can adjudicate these disputes. If the grievances of the people are not resolved peacefully by an independent forum, they will be resolved violently. Hence the judiciary is a great safety valve, which is absolutely essential for maintaining peace and harmony in society. The judiciary has to be independent if it is to be respected by the public. India's judiciary is respected by the people because we have maintained an independent judiciary ; whereas in Countries under Dictatorship or Military Governance there is not even semblance of judiciary what to say of independent judiciary e.g. in our neighbouring country and the judiciary is not respected in such countries by its own people because the Judges there merely follow the dictates of the rulers in such regimes and hence do not inspire confidence of the public.

8. In order to maintain the confidence of the public, an independent judiciary free of executive control is necessary. For this reason Article 50 of the Constitution directs :

?The state shall take steps to separate the judiciary from the executive in the public services of the State.?

9. The above provision of Article 50 of the Constitution has been often overlooked in our country. The Courts have to take consideration of the

constitutional provisions including the Directive Principles because the Constitution is the highest law of the land.

No doubt Article 37 of the Constitution states as under :

?The provisions contained in this part shall not be enforceable by any Court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.?

10. The above provisions while saying that the Directive Principles are not enforceable in the Courts, yet laid down that the principles contained in Part IV of the Constitution are nevertheless fundamental in the governance of the country. It shall be the duty of the State in applying these in the country.

11. In our opinion persons cannot get justice unless the judiciary is independent and inspires confidence of the public.

In *Bidi Supply Co. v. Union of India and others*, AIR 1956 SC 479, the Hon''ble Supreme Court has observed (vide para 25) :

?The heart and core of a democracy lies in the judicial process and that means independent and fearless judges free from executive control brought up in judicial traditions and trained to judicial ways of working and thinking. The main bulwarks of liberty and freedom lie there, and it is clear to me that uncontrolled powers of discrimination in matters that seriously affect the lives and properties of people cannot be left to executive or quasi executive bodies even if they exercise quasi judicial functions because they are then invested with an authority that even Parliament does not possess.?

12. The words ?brought up in judicial traditions and trained to judicial ways of working and thinking?, used above are significant. Unless one has an independent judicial mind and is trained in judicial functions and is conversant with the relevant case law, relevant rules and laws, he will not be able to do justice and will not inspire confidence of the public.

13. The persons from the purely executive side may be very intelligent and honest, yet they will not be able to dispense justice and discharge judicial functions properly not being possessed of a trained judicial mind nor conversant with intricate applicable legal principles and judicial manner of thinking. They are likely to have in inbuilt proexecutive bias, having worked for long years in the executive and hence will not inspire the confidence of the public.

14. We are reminded of an incident in English history. In 1616 AD James I of England told the Chief Justice Lord Coke that the King would like to decide a case (the Commendam case) as he was the fountain of justice and the Judges were only his delegates. When Lord Coke objected, the King asked him why Lord Coke replied that the King was not competent to decide cases, as he was not trained in law.

15. Lord Coke's own narration of the incident as recorded by him in his own words reads as follows :

Then the King said that he thought the law was founded upon reason and that he and others had reasons as well as the judges : to which it was answered by me, that true it was that God had endowed His Majesty with excellent science and great endowments of nature but His Majesty was not learned in the laws of his realm of England, and causes which concern the life or inheritance or goods, or fortunes of his subjects, are not to be decided by natural reason, but by the artificial reasons and judgment of law, which law is an act which requires long study and experience, before that a man can attain to the cognizance of it that the law was the golden metwand and measure to try the causes of the subjects ; and which protected His Majesty in safety and peace. With which the King was greatly offended, and said that then he should be under the law which was reason to affirm as he said to which I said that Bracton saith, quod Rex non debet esse sub homine, sed sub Deo et lege? (the King is under no man but God and the law).

16. Thus as pointed by Lord Coke, cases are not decided on the basis of natural reason but on the basis of artificial reason, which means knowledge of the law, which takes years of study to acquire. Similarly, we have to say the members of the executive, as Lord Coke told the King, that they may be very honest and intelligent, but they do not possess that knowledge of the law and that legal training which alone can enable one to decide cases properly.

17. In Chandra Mohan v. State of U.P., AIR 1966 SC 1987, Constitution Bench of Hon"ble Supreme Court has observed that

Our Constitution though it does not accept the strict doctrine of separation of powers, provides for an independent judiciary in the State ; it constitute a High Court for each State, prescribes the institutional conditions of service of the judges thereof, confers extensive jurisdiction on it to issue writs to keep all Tribunals, including in appropriate cases the Governments within bounds and gives to it the power of superintendence over all Courts and Tribunals in the territory over which it has jurisdiction. But the makers of the Constitution also realised that it is the Subordinate Judiciary in India who are brought most closely into contact with the people and it is no less important perhaps indeed even more important that their independence should be placed beyond question as in the case of superior Judges.?

18. In the State of Maharashtra v. Labour Law Practitioners Association, AIR 1998 Supreme Court 1233, the Hon"ble Supreme Court has observed that the constitutional scheme shows a clear anxiety on the part of the framers of the Constitution to preserve and promote independence of the judiciary from the executive. The Court referred to its earlier decisions, e.g. *Statesman (Private) Ltd. v. H.R. Deb*, AIR 1968 SC 1495, where it was observed that the men who could be described as independent and with sufficient judicial experience must be

selected as Labour Court Judges. In para 18 of the decision in the case of State of Maharashtra v. Labour Law Practitioners Association (supra) it was observed by the Hon"ble Supreme Court that a holder of judicial office under Article 217(2) (a) means that the person who exercises judicial functions must belong to the judicial service, which as a class is free from executive control and is disciplined to uphold the dignity, integrity and independent of the judiciary.

19. Sri Navin Sinha, learned Counsel for Respondent No. 5, has referred to the Supreme Court decision in S.P. Sampath Kumar v. Union of India and others, (1987) 1 Supreme Court Cases 124, and has invited our attention to para 21 of the same. In Para 21 the Hon"ble Supreme Court has specifically stated that

?We do not want to say anything about Vice Chairman and members dealt with in subsection (2)(3) or (3A) of Section 6 of the Administrative Tribunal Act.?

20. Since the Hon"ble Supreme Court has specifically stated that it does not want to say anything in this matter we cannot interpret the observation otherwise. Moreover there is no mention of Article 50 of the Constitution in S.P. Sampath Kumar's case (supra).

21. In Supreme Court Advocates on Record Association and another v. Union of India, AIR 1994 SC 268, the Hon"ble Supreme Court has observed that ? Independent judiciary is most essential.?

22. Sri A.K. Singh, learned Counsel for Union of India has referred to para 95 of the decision in L. Chandra Kumar v. Union of India and others, 1997(1) LBESR 877 (SC) ; 1997 (3) SCC 261 (par 95) where it was observed by the Hon"ble Supreme Court that :

?We are also required to address the issue of the competence of those who were the Tribunals and the question of who is to exercise administrative supervision over them. It has been urged that only those who have had judicial experience should be appointed to such Tribunals. In the case of Administrative Tribunals, it has been pointed out that the Administrative Members who have been appointed have little or no experience in adjudicating such disputes ; the Malimath Committee has noted that at time IPS Officers have been appointed to these Tribunals. It is stated that in the short tenures that these Administrative Members are on the Tribunal, they are unable to attain enough experience in adjudication and in cases where they do acquire the ability, it is invariably on the eve of the expiry of their tenures. For these reasons, it has been urged that the appointment of Administrative Members to Administrative Tribunals be stopped. We find it difficult to accept such a contention. It must be remembered that the setting up of these Tribunals is founded on the premise that specialist bodies comprising both trained administrators and those with judicial experience would by virtue of their specialist knowledge, be better equipped to dispense speedy and efficient justice. It was expected that a judicious mix of judicial members and those with grassroots experience would best service this purpose. To hold that the Tribunal should consist only of judicial Members would attack the

primary basis of the theory pursuant to which they have been constituted. Since the Selection Committee is now headed by a Judge of the Supreme Court nominated by the Chief Justice of India, we have reason to believe that the Committee would take care to ensure that Administrative Members are chosen from amongst those who have some background to deal with such cases.?

23. We have carefully perused the observations of the Hon'ble Supreme Court. In our opinion these observations only mean that the members of the executive can be appointed as Administrative Member of the Tribunal. This observation does not mean that even the Vice Chairman can be a person purely from the executive side. In our opinion the Vice Chairman of CAT i.e. the person who is to preside over the Tribunal must have legal background and must not be purely from the executive side. No doubt Section 6(2) states that a Secretary or Additional Secretary of the Government of India can be appointed as Vice Chairman. However, as observed in our order dated 2522002, this provision must be read with Article 50 of the Constitution and not in isolation. We are of the opinion that the Vice Chairman can only be a person referred to in Section 6(2) (a) or a judicial member of the Tribunal referred to in Section 6(2)(c). Thus even an Advocate, who has put in ten years practice and hence has qualification to be a Judge of a High Court, can be appointed as Vice Chairman of the CAT under Section 6(2). We are of the opinion, as observed in our order dated 1522002 that Section 6(2) if read with Article 50 of the Constitution has to be interpreted to mean that a person who is a Secretary or Additional Secretary of the Government of India or a person who is an Administrative Member as referred to in Section 6(2)(c) can only be appointed Vice Chairman if no person with legal background as mentioned in Section 6(2)(a) or a judicial member referred to in Section 6(2)(c) is available. Even in such situation such appointment as Vice Chairman of the Secretary or Additional Secretary or the Administrative Member can only be a stop gap arrangement for a short period till the person mention in Section 6(2)(a) or judicial member referred to in Section 6(2)(c) becomes available.

24. In *R.K. Jain v. Union of India*, 1993 (4) SCC 172 (vide para 71), the Hon'ble Supreme Court has held :

?The daily practice in the Courts not only gives training to Advocates to interpret the rules but also adopt the conventions of Courts. In built experience would play a vital role in the administration of justice and strengthen and develop the qualities of intellect and character, forbearance and patience, temper and resilience which are very important in the practice of law. Practising Advocates from the Bar generally do endow with those qualities to discharge judicial functions. Specialised nature of work gives them added advantage and gives benefit to broaden the perspective." Judges" by David Pannic (1987 Edn.) at page 50 states that ?we would not allow a man to perform a surgical operation without a thorough training and certification of fitness. Why not require as much of a trial Judge who daily operates on the lives and fortunes of others.? This

could be secured with the initial training given at the Bar and later experience in judicial adjudication. No one should expect experience in such a vast range of subjects, but familiarity with the basic terminology and concept coupled with knowledge of trends is essential. A premature approach would hinder the effective performance of judicial functions. Law is a serious matter to be left exclusively to the judges, because judges necessarily have an important role to play in making and applying the law. There is every reason for ensuring that their selection, training and working practice facilitate them to render their ability to decide the cases wisely on behalf of the community. If judges act in injudicious manner, it would often lead to miscarriage of justice and a brooding sense of injustice rankles in an aggrieved person.?

25. Hence we hold that the Vice Chairman of the CAT must be a person with a legal background as referred to above. Any appointment on the post of Vice Chairman of the CAT from amongst the persons referred to in Section 6(2)(b) or (bb) or any person who was an administrative member of the CAT as referred to in Section 6(2)(c) will be illegal, unless it is a stop gap temporary arrangement pending selection of the person with a legal background.

26. Sri Chandra Shekharan assisted by Sri Anil Sharma, learned Counsel informed us that presently there is only one Vice Chairman in various benches on the CAT who is from the executive side and he is going to retire on 352002. Hence we therefore direct that in future no appointment on the post of Vice Chairman of the CAT shall be made from amongst the persons referred to in Section 6(2)(b) or (bb) or from the administrative members referred to in Section 6(2)(c) of the Administrative Tribunal Act except in stop gap arrangement for a short period.

27. As regard Mrs. Lakshmi Swaminathan, it has been stated in her affidavit that she has been in Indian Legal Service and was judicial member of CAT for over three years before being appointed Vice Chairman. Hence she has a legal background and in our opinion she was validly appointed as Vice Chairman because she was judicial member for more than three years.

28. It is strange to be noted that while a Secretary of the Government of India who has put in two years as Secretary can be directly appointed as Vice Chairman of the CAT, a judicial member must put in three years service. This is an anomalous situation but it is not necessary to go into the matter in view of our interpretation of Section 6(2) read with Article 50 of the Constitution.

29. We therefore, quash the panel for appointment of Vice Chairman of the CAT to the extent it includes the members from the executive side or Administrative Members referred to above in our judgment. We do not quash the panel so far as it relates to persons with legal background.

30. Before parting with this case we would like to say that there are a large number of Tribunals in the country like CEGAT, Board of Revenue, Income tax appellate Tribunal, Public Service Tribunals, Sales Tax Tribunal etc. which should

have persons from legal background as the presiding Judge to maintain the confidence of the public. In our opinion the senior member of every Tribunal must be a person with a legal background as Presiding Officer of the Tribunal. This will ensure compliance of the mandate of Article 50 of the Constitution. We direct all the authorities, including the Government, to take speedy steps to ensure compliance of this judgment and appoint as presiding Judge of every Tribunal a person with a legal background so that the Tribunal may be independent and may inspire confidence of the Public. If it is a single member bench, then the person must be from a legal background.

31. We are constrained to observe that with the passage of time the executive has started to expand its jurisdiction to judicial spheres, which is specifically prohibited by Article 50, but unfortunately nobody notices this Constitutional mandate.

32. It may be mentioned that in several Tribunals the condemned Officers of IAS or PCS or some other service are appointed. For example in the U.P. Board of Revenue the IAS or PCS Officers are appointed there to do judicial work. This practice is not healthy, and violates Article 50 of the Constitution.

33. We may clarify that in England there is no written Constitution and Parliament is Supreme. Hence in England Parliament can constitute Tribunals with executive authorities as the Presiding Judge. This is not the legal position in India. Here we have a written Constitution with Article 50 whose mandate has to be followed. There is no Article 50 in England.

34. With these directions the writ petition is finally disposed off.

Let a copy of the judgment be sent by the Registrar General of this Court to the Secretary, Law Department, Union of India the Secretary Personnel and Appointment Department, Union of India as also to the Cabinet Secretary of Union of India and to the Chief Secretary of the U.P. Government as also to the Chairman of the CAT and other appropriate authorities.