

(2021) 01 KL CK 0149

In the High Court Of Kerala

Case No : Original Petition (KAT) No. 450 Of 2020

Sindhu P.K And Ors

APPELLANT

Vs

Biju Kurian And Ors

RESPONDENT

Date of Decision : 05-01-2021

Acts Referred:

Limitation Act, 1963 — Section 14
Constitution Of India, 1950 — Article 226, 227

Citation : (2021) 01 KL CK 0149

Hon'ble Judges : Alexander Thomas, J;T.R. Ravi, J

Bench : Division Bench

Advocate : K.M. Sathyanatha Menon, Kavary S Thampi, P. Nandakumar, P. Nandakumar, Vivek Vijayakumar, Sreekumar K.R, Antony Mukkath

Final Decision : Dismissed

Judgement

Alexander Thomas, J

1. The aforecaptioned Original Petition is filed under Articles 226 & 227 of the Constitution of India with the following prayers:

"(i) To call for the records leading to the order dated 18.12.2020 in O.A.No.718/2020 on the file of the Kerala Administrative Tribunal at Thiruvananthapuram [Exhibit P1] and set aside the same.

(ii) To issue such other orders or directions as this Hon'ble Court may deem fit and proper in the circumstances of the case."

2. Heard Sri.K.M.Sathyanatha Menon, learned counsel appearing for the petitioners in the O.P./applicants in the O.A. filed before the Tribunal, Sri.P.Nandakumar, learned counsel appearing for the 1st respondent herein (original applicant before the Tribunal) and Sri.Antony Mukkath, learned Senior Government Pleader appearing for R2 & R3-State Government and Director of Industries and Commerce. In the nature of the orders proposed to be passed in this original petition, notice to the 4th respondent herein is dispensed with.

3. The petitioners in this Original Petition are not parties to the proceedings in the Original Application O.A. No.718/2020 on the files of the Kerala Administrative Tribunal, Thiruvananthapuram. According to the petitioners herein, they are highly aggrieved by the impugned Ext.P1 order dated 18.12.2020 rendered by the Kerala Administrative Tribunal, Thiruvananthapuram in O.A.No.718/2020 filed by the 1st respondent herein. The said O.A.No.718/2020 was filed by the 1st respondent herein impugning the order issued by the competent authority-State Government ordering to place R1 herein under suspension from service on the basis of the allegations mentioned therein. The Tribunal as per the said impugned order as Ext.P1 dated 18.12.2020 has interfered with the said impugned suspension order and has set aside and quashed the impugned suspension order. According to the petitioners herein, they are some of the persons who have made complaints against the functioning of R1 herein as Joint Director of Industries and Commerce at Idukki and that the 1st and 2nd petitioners herein are working as Industries Extension Officer at the local bodies in Idukki District and the 3rd petitioner herein is now working as an Industries Extension Officer in a local body at Pathanamthitta District and that she was earlier working in Idukki District.

4. After hearing all the parties concerned, this Court is of the considered view that it may not be right and proper for this Court to entertain this Original Petition on merits at this stage. The matter in issue is covered by the judgments of the Apex Court in *Rajeev Kumar and another V. Hemaraj Singh Chauhan and others* [2010 (4) SCC 554] = [AIR 2010 SC 1679] as well as the judgments of the Division Bench of this Court as in the judgment dated 12.07.2010 in WP(C) No.20979/2010, as well as the judgment of the Division Bench rendered on 19.06.2013 in OP(KAT) No.1286/2013 (*Gireesh Babu M.B. and others V. Pavithran T.T.V. and others* reported in [2013 (3) KHC 165]). The Apex Court in the decision in *Rejeev Kumar's case supra* [2010 (4) SCC 554] has held in paragraph 16 thereof that the remedy of a person, who is a third party to the proceedings of the Tribunal, who is aggrieved by the order of the Tribunal would lie before the Tribunal in the form of an application of review. In paragraph 11 of the decision in *Rajeev Kumar's case supra* [2010 (4) SCC 554] the Apex Court had held that going by the legal position already settled by the 7-Judge Bench of the Apex Court in *L.Chandrakumar V. Union of India* [(1997) 3 SCC 261], two things are clear and that (a) the Tribunals will function only as the Court of first instance in respect of the areas of law for which they have been constituted and (b) where any challenge is made to the vires of legislation, excepting the legislation under which the Tribunal has been set up. In such cases also, the litigant will not be able to approach the High Court overlooking the jurisdiction of the Tribunal. Further, the said legal position has also been reiterated by the Larger Bench of the Apex Court in the aforecited *L.Chandrakumars' case supra* [(1997) 3 SCC 261] in paragraph 99 thereof, wherein it has been held that the Tribunal cannot act like Court of first instance in respect of the areas of law for which they have been constituted and it will not therefore be open for litigants to

directly approach the High Court, 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. Hence it was held by the Apex Court in Rajeev Kumar's case *supra* [2010 (4) SCC 554] , that the third parties to the proceedings before the Tribunal, cannot seek to approach the High Court by treating it as a court of first instance, etc. The Division Bench of this Court in the judgment dated 19.06.2013 in OP(KAT) No.1286/2013 in Gireesh Babu M.B. and others V. Pavithran T.T.V and others [2013 (3) KHC 165 (DB)], has explained the legal position in that regard and has held in paragraph Nos. 5 to 7 thereof as follows:

"5. Faced with the discussions in paragraphs 7 to 14 of Rajeev Kumar (*supra*) and the pointed conclusions arrived at in paragraph 11 of that judgment, on the basis of the ratio of *L.Chandra Kumar v. Union of India* [(1997) 3 SCC 261], the learned counsel for the petitioners attempted to distinguish Rajeev Kumar by saying that while in that case, the employees - Rajeev Kumar and another, had applied for impleadment in a petition pending before the High Court against the decision of the Central Administrative Tribunal, while the petitioners herein have come directly to this Court invoking Article 227 of the Constitution. Though the learned counsel for the petitioners thus tried to draw a distinction between original petitioners and impleading petitioners, we do not see any room for classification of the parties on that basis. We say this because, in Rajeev Kumar, the categorical statement of the Apex Court is that "the approach made to the High Court for the first time by these appellants in respect of their service disputes over which CAT has jurisdiction, is not legally sustainable." It was also held that the Division Bench of the High Court fell into an error by allowing to treat the High Court as a court of first instance in respect of their service disputes for adjudication for which CAT has been constituted. In Rajeev Kumar, the Apex Court had pointed out that in view of the clear law laid by the Constitution Bench in *L.Chandra Kumar* (*supra*), the approach of the High Court treating itself as the court of first instance overlooking the jurisdiction of the Tribunal was unacceptable. Those principles apply on all fours to matters arising from decisions of all Tribunals constituted under the Administrative Tribunals Act, 1985, including the Kerala Administrative Tribunal.

6. Incidentally, the Apex Court had also noted in Rajeev Kumar that the Tribunal has also the power of review. We do not see that expression, as excluding any other mode available before the Tribunal, for grant of relief, to persons who were entitled to be heard, if found so; yet, not heard before the verdict was handed down by it.

7. The learned counsel for the petitioners also made reference to *Shama Prashant Raje v. Ganpatrao* [(2000) 7 SCC 522)] to argue that notwithstanding that the jurisdiction of the High Court under Articles 226 and 227 is supervisory and not appellate; if perusal of the order of an inferior tribunal leads to the conclusion that one among the four conditions enumerated in that precedent

exists, the High Court would be fully justified in interfering with the findings of the inferior tribunal. We see that such law was laid in consonance with the existing precedent law and that was applied to decisions arising under the rent control laws. The principles laid down by the Constitution Bench in *L. Chandra Kumar* were not adverted to while deciding *Shama Prashant Raje* (supra), which dealt with a different jurisdictional zone. *L. Chandra Kumar* was pointedly adverted to, considered and applied by the Apex Court while deciding *Rajeev Kumar*. We are, therefore, of the view that *Rajeev Kumar* directly applies as the precedent to the case in hand while the ratio in *Shama Prashant Raje* does not apply to the context in hand."

5. The Full Bench of this Court in a recent decision rendered in the case in *Haris K.M. V. Jahfar K.* [2020 (4) KLJ 846], has held in paragraph Nos.9, 11 and 27 thereof, as follows:

"9. On a consideration of the totality of these circumstances, the principles laid down in *Rajeev Kumar* (Supra) and *Gireesh Babu* (Supra) will not in any way affect the rights of persons who were parties in one or other O.A.'s, to get impleaded in the original petition, even though they were not parties in the particular original application from which the original petition arises. The rights of such persons cannot be treated at par with the rights of persons who were strangers to the proceedings. None of these persons can or need to approach the Tribunal with a review petition or any other petitions, since they are beneficiaries of the judgment of the Tribunal. Even the strangers to the O.A's who would stand affected by the decision of this Court in the O.P. would have a right to seek for impleadment since the respondents before the Tribunal were impleaded in a representative capacity and every person similarly situated is deemed to have been represented before the Tribunal. Hence *Haris* too has a right to be impleaded and heard, in defense of the order of the Tribunal.

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11. We are not considering the merits of the claim for impleadment alone, but a reference of a Division Bench as to whether the cited decisions of this Court and of the Hon'ble Supreme Court would act as an inviolable rule that none who are parties before the Tribunal could approach this Court, either as petitioners or seek impleadment as respondents; in the latter case for resisting or supporting the order of the Tribunal. We do not and cannot contemplate all of the situations that may arise. For clarity we consider a few, which could in normal circumstances arise, which only occur when there is outright rejection or acceptance of the claims raised in the Original Application, before the Tribunal.

(a) When the Original Application is dismissed by the Tribunal:

The applicants before the Tribunal can no doubt approach this Court and challenge the decision of the Tribunal. All the same, persons seeking similar reliefs as the Applicants, are not entitled to get themselves impleaded in the original petition filed by the Applicants, merely to ensure that they too get the

benefit of the order of this Court, if there is reversal of the order of the Tribunal. Such persons have to necessarily approach the Tribunal with a review or a fresh original application and only thereafter can they approach the High Court, based on the decision of the Tribunal. At the same time, persons identically situated to the respondents in the above said illustration, who were not parties before the Tribunal, will not be entitled to seek impleadment in the original petition filed by the Applicants, to support the dismissal of the Original Application, since that is a case covered by Rajeev Kumar (supra).

(b) When the Original Application is allowed by the Tribunal:

The respondents in such cases can approach this Court and file an original petition to challenge the judgment of the Tribunal. However, in such original petitions, persons similarly placed like the successful applicants before the Tribunal cannot seek impleadment and claim the same relief as the Applicants. Nor can they get impleaded, for the purpose of supporting the order of the Tribunal. The remedy available to such persons is either to approach the Tribunal with a fresh original application or to wait for the result of the original petition, since they cannot be allowed to bypass the Court of first instance. Whether they choose to file an original application while the original petition is pending or they file it after the original petition is dismissed, it would be for the Tribunal to consider whether they are guilty of delay or laches. As regards, persons similarly situated as respondents, their remedy is not to approach this Court and get impleaded in the original petition filed by the respondents. They will have to seek a review of the judgment before the Tribunal. Such situation is similar to the one in Gireesh Babu(supra).

(c) A unique situation that may arise is the one which has occasioned this reference, the facts of which have already been detailed earlier. In such situations, we are of the opinion that all persons who were respondents before the Tribunal in any of the original applications, which has been jointly dismissed by a common judgment, are entitled to get themselves impleaded in an original petition filed against the judgment in one such original application, since they are all persons entitled to be treated as parties to the "proceedings" and are not persons who have bypassed the court of first instance. This would also apply to persons who are interested and are affected, but were not physically present before the Tribunal, since they are deemed to be represented by those respondents impleaded, in a representative capacity, that too after a paper publication. So also, those petitioners in I.A.1294 of 2018, who are similarly situated to such respondents, who also had approached the Tribunal for similar reliefs and have either succeeded before the Tribunal or their original application is pending consideration, are also persons entitled to get themselves impleaded, to support the decision in the original application, since such persons cannot be treated as having bypassed the court of first instance and at the same time are likely to be affected by the decision in the original petition.

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27. In the manner in which we have understood the decisions in Rajeev Kumar (supra) and Gireesh Babu (supra), we are not in a position to accept the propositions of law laid down in S.Prabha (supra) and Rajesh (supra) and we overrule the judgments in so far as they hold that that the original petition was maintainable directly to the High Court at the instance of third parties. With all due respect to the Division Bench, we are of the opinion that entertaining the original petition at the instance of third parties, was against the dictum laid down in Rajeev Kumar (supra) and Gireesh Babu (supra). We are of the considered opinion that both the Division Benches in S.Prabha (supra) and Rajesh (supra), if they were in disagreement with the judgment of the Division Bench in Gireesh Babu (supra) ought to have referred the matter to a Full Bench." (emphasis supplied)

6. Taking note of the facts and circumstances of the case, it has only to be held that the case of the present O.P. will not come within the exceptional factual scenario envisaged in paragraph No.9 of the decision of the Full Bench of this Court in Haris's case supra [2020 (4) KLJ 846].

7. Their Lordships in the Full Bench have held in paragraph 11 of the decision in Haris's case supra [2020 (4) KLJ 846] that persons who are not parties before the Tribunal will not be entitled to seek impleadment in the revision petition filed by the applicants in support of the dismissal of the original application since that is a case covered by the decision of the Apex Court in Rajeevkumar's case supra [2010 (4) SCC 554] and when the original application is allowed by the Tribunal.

8. Hence, this Court is constrained to take the view that the facts of this case would be covered by the dictum laid by the Apex Court in the decision as in Rajeevkumar's case supra [2010 (4) SCC 554] as well as in the aforecited judgments of the Division Bench of this Court in WP(C). No.20979/2010 dated 12.07.2010 and O.P.(KAT) No.1286/2013 [reported in Gireesh Babu M.B. and others V. Pavithran T.T.V and others [2013 (3) KHC 165]].

9. Hence it is for the petitioners to immediately approach the Kerala Administrative Tribunal by filing appropriate review application, in case they are seriously aggrieved by the impugned Ext.P1 order dated 18.12.2020 rendered by the Kerala Administrative Tribunal, Thiruvananthapuram in O.A.No.718/2020 without any further delay. If the Rules of Procedure of the Tribunal stipulate that in such cases, third parties will have to also secure leave for filing such review application and delay condonation application is also to be filed if delay is involved, then it is for the petitioners herein to ensure that such procedural formalities are also complied with. However, it is made clear that the present OP(KAT) No.450/2020 was filed by the petitioners before this Court on 21.12.2020 is not maintainable. It is also ordered that the petitioners herein will be at liberty to raise the plea before the Tribunal that the period spent by them before this Court in this Original Petition may be excluded for the purpose of computing the period of limitation, as envisaged in Section 14 of the Limitation Act. If such a plea is so made, then the Tribunal may consider such plea, after

hearing both sides and in accordance with law. To avoid further delay, it is ordered that if the petitioners choose to file any review applications along with any accompanying miscellaneous applications for third party leave, delay condonation, stay etc., it shall be ensured that advance copies of such review application and miscellaneous applications should be duly served by them to Sri.P.Nandakumar, learned counsel appearing for R1 herein/original applicant and counsel for the petitioners may also notify in advance Sri.P.Nandakumar, learned counsel about the listing and consideration of the case before the Tribunal, so that the Tribunal may not have to spend more time for issuing notice to the original applicant and decision may be rendered on such miscellaneous applications and review applications, after hearing the counsel for the original applicant, learned Government Pleader, etc. In the light of these aspects, it is only to be ordered that the present original petition is not maintainable before this Court. Hence, it is also ordered that interim stay order granted by this Court on 29.12.2020 will also stand vacated. The Tribunal may consider and decide the matter independently untrammelled and uninfluenced in any manner by the observations and orders made by this Court hereinabove.

The Registry will forward a copy of this judgment to the Kerala Administrative Tribunal, Thiruvananthapuram Bench for necessary information. These observations and directions and with the said liberty to the petitioners, the above original petition is dismissed as not maintainable at this stage.