

(1992) 06 BOM CK 0025

In the Bombay High Court

Case No : Writ Petition No. 1784 of 1987

Suryakant Shankar Jog and Another

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 18-06-1992

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14, 28, 3, 6
Constitution of India, 1950 — Article 226, 227

Citation : (1992) 94 BOMLR 264

Hon'ble Judges : Sujata Manohar, J;B.P. Saraf, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Sujata Manohar, J.—In this writ petition the petitioners have challenged Rule 1(c) of the All India Services (Confidential Rolls) Rules, 1970 and a letter dated 20th May, 1987 addressed by the Special Secretary to the Government of Maharashtra, Home Department, to the Director General, Inspector General of Police. State of Maharashtra under which the Government has rejected the proposals submitted by the petitioners relating to the writing of confidential reports. The entire dispute relates to the manner in which and the authorities by whom the confidential reports of members belonging to the All India Police Service have to be written.

2. It is the submission of the respondents that the dispute is covered by the provisions of the Administrative Tribunals Act, 1985 (hereinafter referred to as "the Act") and hence this Court has no jurisdiction to entertain the writ petition. The matter is, therefore, being heard in order to decide this preliminary issue.

3. u/s 28 of the Act on and from the date from which any jurisdiction, powers and authority become exercisable under the Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post, no Court except the Supreme Court, or any Industrial Tribunal, Labour

Court or other authority constituted under the Industrial Disputes Act, 1947 or any other corresponding law for the time being in force shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment, or matters concerning such recruitment or such service matters.

4. u/s 14(1) of the Act the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all Courts except the Supreme Court in relation to recruitment, and matters concerning recruitment, to any All India Service. Therefore, u/s 28 read with Section 14 of the Act, on the constitution of the Central Administrative Tribunal all service matters pertaining to any All India Service will have to be decided by the Central Administrative Tribunal and the High Court shall cease to have jurisdiction in connection with such matters.

5. The term "service matters" is defined u/s 3(q) of the Act. It says "service matters", in relation to a person, means all matters relating to the conditions of his service in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India?as respects (i) remuneration (including allowances), pension and other retirement benefits; (ii) tenure including confirmation, seniority, promotion, reversion premature retirement and superannuation; (iii) leave of any kind; (iv) disciplinary matters; or (v) any other matter whatsoever. The term "service matters", therefore, includes within its ambit all matters pertaining to a person's service, inter alia, in connection with the affairs of the Union, Writing of confidential reports is very much a part of the incidence of service and it is covered by the definition of "service matters" u/s 3(q)(v). Therefore, the present dispute which relates to the writing of confidential reports of members of an All India Service viz., the Indian Police Service is covered by the above provisions of the Act and this Court has, therefore, no jurisdiction to try and entertain such a petition.

6. It is, however, submitted by the petitioners that the Act stands invalidated on account of the decision of the Supreme Court in S.P. Sampath Kumar v. Union of India AIR 1987 SC 386 and hence the Central Administrative Tribunal constituted under the Act is not a validly constituted body to which any dispute covered by the Act can be referred. In the absence of such a validly constituted Tribunal and in view of the fact that the Act has been held invalid, this Court has jurisdiction to entertain this petition under Article 226. The petitioners contend that in S.R Sampath Kumar's case (supra) the Supreme Court had given certain directions regarding amendment of the Act. According to the petitioners, one of these directions has not been carried out and hence the Act is invalid, unconstitutional and cannot be enforced. This submission in our view, is without any merit. The Supreme Court has held in the first place, that the exclusion of jurisdiction of the High Courts under the Act does not invalidate the Act because such exclusion is not contrary to the doctrine of judicial review. The Supreme Court observed that in view of the fact that the judicial review of the decisions of the Tribunal by the

Supreme Court had been left wholly unaffected and that, there was thus a forum where matters of importance and grave injustice could be brought for determination or rectification, the Act could not be invalidated on this account. This aspect of the decision has been reiterated by the Supreme Court in *J.B. Chopra and Others Vs. Union of India (UOI) and Others*, .

7. In *Sampath Kumar's* case the next point considered related to the eligibility criteria of persons to be appointed as Chairmen and Vice-Chairmen. We need not examine this aspect of the judgment because, according to the petitioners, requisite amendments in this regard have now been carried out in the Act.

8. The next aspect which the Supreme Court touched upon in *Sampath Kumar's* case was regarding the manner of selection of Vice-Chairmen and members of the Tribunal. In this connection, of the five Judges of the Bench which heard the case, *Bhagwati, C.J.* said that if the Administrative Tribunal is created in substitution of the High Court and the jurisdiction of the High Court under Articles 226 and 227 is taken away and vested in the Administrative Tribunal, the same independence from the possibility of executive pressure or influence must also be ensured to the Chairman, Vice-Chairmen and members of the Administrative Tribunal. Or else the Administrative Tribunal would cease to be an equally effective and efficacious substitute for the High Court and the provisions of the impugned Act would be rendered invalid. In order to ensure such independence the learned Chief Justice suggested two alternatives. The first alternative was: The appointment of Chairman, Vice-Chairmen and administrative members should be made by the concerned Government only after consultation with the Chief Justice of India and such consultation must be meaningful and effective. Ordinarily the recommendation of the Chief Justice of India must be accepted unless there are cogent reasons, in which event the reasons must be disclosed to the Chief Justice of India and his response must be invited to such reasons. The second alternative which was suggested was the setting up of a high powered Selection Committee headed by the Chief Justice of India or a sitting Judge of the Supreme Court or concerned High Court nominated by the Chief Justice of India. The other four Judges said that such independence could be secured by appointment of a high powered Selection Committee as set out above for selecting Chairman, Vice-Chairmen and members of the Administrative Tribunal.

9. As two alternative methods were suggested, Review Petitions Nos. 520-23 of 1987 were filed before the Supreme Court. The Supreme Court by its order dated 5th May, 1987 said that the appropriate course would be to appoint a high powered Selection Committee headed by a sitting Judge of the Supreme Court to be nominated by the Chief Justice of India in the case of the Central Administrative Tribunal; while in the case of the State Administrative Tribunals, the high powered Selection Committee should be headed by a sitting Judge of the High Court to be nominated by the Chief Justice of the High Court concerned.

10. As a result of the judgment, Section 6(7) has been added to the Act under

which it is provided that no appointment of a person possessing the qualifications specified in that section as the Chairman, a Vice-Chairman or a Member shall be made except after consultation with the Chief Justice of India. This was done by Amendment Act No. 51 of 1987 which came into operation on 22nd December, 1987. We are informed by the respondents that pursuant to this amendment the Chief Justice of India has appointed a high powered Selection Committee headed by a sitting Judge of the Supreme Court for the purpose of selection of Chairman, Vice-Chairmen and members of the Central Administrative Tribunal.

11. It is, however, submitted by the petitioners that the amended Section 6(7) does not comply with the directions given in Sampath Kumar's case read with the order in the Review Petitions and hence the Act is invalid. In the first place, in our view, it is not possible to say that the amendments which had been suggested have not been carried out in essence. The directions given by the Supreme Court were for the purpose of securing independence of the Administrative Tribunal from executive pressure or influence. The Supreme Court itself was of the view that consultation with the Chief Justice of India would be one way of securing such independence. The amendment provides for this. In the Review Petitions, however, the second mode of securing such independence by appointing a high powered Selection Committee was recommended. In this context, in fact, the Chief Justice of India has constituted a high powered Selection Committee as contemplated, for selection of Chairman, Vice-Chairmen and members of the Tribunal. Therefore, the challenge to the selection process under the Act does not have any substance when independence from executive pressure is secured by the provisions now enacted and the committee which has been constituted pursuant thereto.

12. Moreover, even if we assume that the directions of the Supreme Court in Section P. Sampath Kumar's case have not been strictly carried out while amending Section 6(7) of the Act, that, in our view, does not automatically invalidate the Act. The Supreme Court itself did not invalidate the Act. On the contrary it upheld the Act. It, however, said that unless certain amendments were made as set out in its judgment the Act was liable to be rendered invalid and for that purpose it prescribed a certain time-limit to carry out the amendments. This time-limit was extended from time to time and ultimately the amendments were in fact carried out in the Act. There is nothing in this judgment which would render the Act automatically invalid if any amendment is or is not carried out. Therefore, the Act remains very much on the statute book. It is not open to us to consider it as invalid as submitted by the petitioners.

13. In this connection, our attention was also drawn to a judgment of a Single Judge of this Court in Writ Petition No. 800 of 1981 with Writ Petition No. 623 of 1985 dated 26th June, 1986 rendered by Rule A. Jahagirdar, J. He also came to the conclusion that non-compliance with the condition stipulated by the Supreme Court would not automatically result in the Act becoming invalid. He observed that the Supreme Court itself had not said that in case of non-compliance with

the conditions of its order the High Court would continue to have jurisdiction. Hence the learned Judge came to the conclusion that the jurisdiction of the High Court was ousted on account of the enactment of the Act.

14. For reasons which we have set out above, we are of the view that this Court has no jurisdiction to entertain the writ petition. The petition is returned for presentation before the Central Administrative Tribunal.

15. The petitioners apply for a stay of the operation of this judgment. Since we have come to the conclusion that this Court has no jurisdiction to entertain the writ petition the question of stay does not arise. The application is rejected.