
(2002) 02 MAD CK 0176
In the Madras High Court

The Executive Engineer, Tamil Nadu Water Supply and
Drainage Board, Maintenance Division

APPELLANT

Vs

P. Sugumar and Others

RESPONDENT

Date of Decision : 21-02-2002

Acts Referred:

Citation : (2002) 2 MLJ 42

Hon'ble Judges : R. Jayasimha Babu, J

Bench : Division Bench

Judgement

R. Jayasimha Babu, J.—Admit. Issue Rule Nisi. Interim stay. Call for the records in four weeks. Notice.

2. In all these writ petitions, the petitioner Board which is a statutory body constituted under Tamil Nadu Act 4 of 1971 complains that the Tribunal has assumed jurisdiction even in the absence of a notification u/s 15(2) of the Administrative Tribunals Act, 1985, extending its jurisdiction to statutory Corporations.

3. The learned Counsel for petitioner brought to our notice an earlier order made by the Tribunal on 12.10.2000 in O.A.No.3716 of 1999 and connected matters, that order having been made by the Chairman sitting alone, constituting Bench u/s 5(6) of the Administrative Tribunals Act, 1985. It was submitted by me learned Counsel that it is on the basis of that order that the Tribunal has been asserting jurisdiction even in respect of persons who are not in the service of the State, but are employed in local or other authorities and Corporations or Societies owned or controlled by the State Government, despite the absence of any notification u/s 5(2).

4. We have, therefore, perused that order, in paragraph 30 of that order, the Tribunal has stated thus:

For the foregoing reasons, in my view, Sub-sections (2) and (3) of Section 15 of the Administrative Tribunals Act, 1985 are ultra vires Article 323-A(1) of the

Constitution. Therefore, it follows that the State Administrative Tribunals will have jurisdiction over all the disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services, viz., State, Local or other authority or Society or Corporation under the control of the State Government. Similarly, the Tribunal will have jurisdiction in respect of complaints and disputes of persons holding posts in connection with the affairs of the State or Local or other authority or Society or Corporation under the control of the State Governments. There is no necessity for the State Governments to issue a separate notification conferring the jurisdiction with reference to these disputes upon State Administrative Tribunals.

5. Article 323-A of the Constitution relied on by the Tribunal reads thus:

323-A. Administrative Tribunals: Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts 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 or of any corporation owned or controlled by the Government.

(2) A law made under Clause (1) may-

(a) provide for the establishment of an administrative tribunal for the Union and a separate administrative tribunal for each State or for two or more States;

(b) specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;

(c) provide for the procedure (including provisions as to limitation and rules of evidence) to be followed by the said tribunals;

(d) exclude the jurisdiction of all Courts, except the jurisdiction of the Supreme Court under Article 136, with respect to the disputes or complaints referred to in Clause (1);

(e) provide for the transfer to each such administrative tribunal of any cases pending before any Court or other authority immediately before the establishment of such tribunal as would have been within the jurisdiction of such tribunal if the cause of action in which such suits or proceedings are based had arisen after such establishment;

(f) repeal or amend any order made by the President under Clause (3) of Article 371-D;

(g) contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning if, and for the speedy disposal of cases by, and the enforcement of the orders of, such tribunals.

(3) The provisions of this article shall have effect notwithstanding anything in any other provision of this Constitution or in any other law for the time being in force.

6. Article 323-A of the Constitution does not by itself create Tribunals. It only empowers Parliament to enact law, inter alia, providing for the constitution of the Tribunal. If Parliament chooses to enact the law, the law to be enacted may, as provided in Sub-clause (b) of Article 323-A(2), "specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of such Tribunals". The jurisdiction of the Administrative Tribunals constituted under the Administrative Tribunals Act, 1985 is, therefore, limited to the jurisdiction conferred on such Tribunals by the Act and the Tribunal does not have any jurisdiction, de hors the Act.

7. The Tribunal has no authority to extend its jurisdiction by ignoring any part of the Act, or by assuming authority to declare any provision of that Act as unconstitutional. No question of unconstitutionality, in fact, can arise in so far as the jurisdiction is concerned, as the very Article which confers authority on the Parliament to enact the law, itself provides that the law to be enacted may, among other things, specify the jurisdiction of the Tribunals. The jurisdiction so specified is the jurisdiction which the Tribunal may validly exercise, unless further jurisdiction is conferred by amending the law, or by issuing notifications which the Act permits to be issued for the purpose of enlarging the jurisdiction of the Tribunal. The Tribunal itself cannot direct the amendment of the Act, nor can it direct the issue of a notification for the purpose of enlarging its own jurisdiction. The Tribunal certainly has no competence whatever to declare a part of the law under which it is brought into existence, as invalid.

8. Section 15(2) of the Administrative Tribunals Act, 1985 reads thus:

The State Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of Sub-section (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.

9. The unambiguous and clear effect of this provision is that the jurisdiction of the Tribunal to deal with service matters concerning employees of local or other authorities and corporations or societies controlled or owned by the State Government will arise only on and after a notification with respect to such authority, corporation or society is published u/s 15(2).

10. A Seven Judges Bench of the Supreme Court in the case of L. Chandra Kumar Vs. Union of India and others, has stated thus:

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 Tribunals 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 principles 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 the 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.

11. The "settled principle" as observed by the Apex Court, is that a Tribunal which is a creature of an Act, cannot declare that very Act to be unconstitutional. The bar is not merely against the declaring the whole Act as unconstitutional but as plain common sense would indicate, operates with respect to each and every provision of the Act.

12. We are deeply concerned with the manner in which the Tribunal has sought to expand its jurisdiction contrary to the clear mandate of the law which creates it, and contrary to the express and binding law declared by the Supreme Court which binds all Courts and Tribunals in India. J.3. Having regard to the gravity of the matter we directed the learned Advocate General of the State as also the learned Additional Solicitor General for the Union of India to assist us in this matter. The learned Advocate General as also the learned Additional Solicitor General submitted that the Tribunal being itself a creature of the statute, a fact emphasised by the Supreme Court in paragraph 93 of the judgment in the case of L. Chandra Kumar Vs. Union of India and others, , cannot sit in judgment over any part of the statute which created it and declare any part of it as unconstitutional.

13. This Court which has, under Article 227 of the Constitution, judicial supervision over all Courts and Tribunals throughout the territories" in relation to which this Court exercises jurisdiction is therefore required to make an

appropriate order to compel the Tribunal to act within the limits of its jurisdiction.

14. The Tribunal which exercises powers as an adjudicatory forum cannot, itself become an instrument of harassment by compelling bodies over whom it has no jurisdiction whatever to answer it's summons and expose them to proceedings in contempt for disobedience of orders which the Tribunal had no authority to make.

15. We, therefore, direct the Tribunal not to entertain any petition concerning any local or other authority or corporation or societies controlled or owned by the State Government, or make any order against any of them in any pending petition, unless a notification has been issued in respect of such local or other authority or corporation, or society, controlled or owned by the State Government u/s 15(2) of the Administrative Tribunals Act:

16. A copy of this order shall be communicated to the Tribunal forthwith. Copies of this order shall also be sent to every member of the Tribunal. Copies of this order shall also be made available to the learned Advocate General as well as to the learned Additional solicitor General.