

(1987) 01 AHC CK 0002

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No"s. 3839, 15609 and 19135 of 1985 and 14020 of 1986 & Civil Miscellaneous Writ Petition No"s. 3839, 15609 and 19135 of 1985 and 14020 of 1986

Udai Bhan Singh Chauhan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 16-01-1987

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14(1), 28, 29(1)
Constitution of India, 1950 — Article 226, 227, 323A

Citation : (1987) 1 AWC 369

Hon'ble Judges : K.J. Shetty, C.J.;D.N. Jha, J.;A.N. Varma, J

Bench : Full Bench

Advocate : A.N. Srivastava, for the Appellant;

Judgement

K.J. Shetty, C.J.—A Division Bench of this Court in Udai Bhan Singh Chauhan v. Union of India 1986 UP LB EC 329 while disagreeing with the view taken by another Division Bench in M.B. Shukla v. Union of India 1986 UP LB EC 317 has referred the following two questions for the opinion of a larger Bench:

(1) Whether Section 28 read with Section 14(1) of the Administrative Tribunals Act, 1985 (Central Act 13 of 1985) excludes the jurisdiction, power and authority of this Court exercisable under Article 226/227 of the Constitution in this behalf?

(2) Whether action in writ jurisdiction under Article 226 or Article 227 of the Constitution in relation to this subject matter is "proceeding" within the meaning of the expression used in Section 29(1) of the Act and, as such, stands transferred on the appointed date of the Central Administrative Tribunal?

2. This Full Bench, however, has been constituted to dispose of the entire case of Udai Bhan Singh Chauhan alongwith other connected writ petitions.

3. Before we consider the aforesaid questions, it will be necessary to examine the view taken by this Court in the case of M.B. Shukla. There the question arose

as to whether the High Court has got jurisdiction to entertain writ petition under Article 226 of the Constitution after the Central Administrative Tribunal has been constituted under the Administrative Tribunals Act, 1985 (called shortly the "Act"). Mr. R.M. Sahai, J. speaking for the Bench observed that the High Courts under the Constitution exercise two powers one arising out of law framed by the appropriate legislative, Central or State, and the other Constitutional. Former can be regulated, withdrawn, whittled or expanded but latter being prerogative in nature essential for society governed by rule of law cannot be rendered dormant by legislation express or implied. "While examining the scope of Section 29(1) of the Act, learned Judge observed that proviso to Section 29(1) if read in proper perspective leaves hardly any scope for doubt that it was never the legislative intent to transfer a writ petition since the writ proceeding cannot be deemed to have been included in the word "proceeding" used in Section 29(1).

4. To put it shortly what was held in M.B. Shuklas case was that a High Court could continue to entertain writ petition under Article 226 of the Constitution in relation to service matters although the Central Administrative Tribunal has been constituted to deal with such matters under the Act.

5. In Udai Bhan Singh Chauhan case, Mr. K.C. Agarwal, J. speaking for the Bench has expressed the view that the "proceeding" used in Section 29(1) of the Act would include the proceeding in writ petitions under Article 226/227 of the Constitution and this Court has no jurisdiction to entertain the writ petitions in regard to matters falling within the exclusive jurisdiction of the Central Administrative Tribunal.

6. These are the differing views on the scope of Section 29(1) of the Act. Our task, however, has become simple and we need not delve deep into the matter in view of the recent decision of the Supreme Court. The view taken in Udai Bhan Singh Chauhan case is fully supported by the decision of the Supreme Court in S.P. Sampath Kumar v. Union of India writ petition No. 12437 of 1985 and connected writ petitions) disposed of on December 9, 1986. There the validity of the Act so far it excludes the jurisdiction of the High Courts under Article 226 and 227 of the Constitution came up for consideration. Rang Nath Misra, J. speaking for the Constitution Bench has observed that in the scheme of administration of justice, and the purpose for which the Tribunals are required to be constituted, they have been contemplated as a substitute and not supplemental to the High Courts, and it would be a retrograde steps to provide Tribunal as an additional forum from where parties could again go to High Court. It was further observed:

What, however, has to be kept in view is that the Tribunal should be a real substitute of the High Court not only in form and de jure but in content and defactor. As was pointed out in Minerva's Mills, the alternative and efficient and also capable of upholding the constitutional limitations.

The learned Judge has also suggested to make certain changes in the composition of the Tribunal particularly, in regard to the class of persons to be

appointed as Chairman or Vice Chairman and other members.

7. Mr. Bhagwati, Chief Justice, in his concurring judgment has said:

The exclusion of the jurisdiction of the High Court under Articles 226 and 227 by any law made by Parliament under Clause (1) of Article 323A is, therefore, specifically authorised by the constitutional amendment enacted in Clause (2)(d) of that Article.

8. The learned Chief Justice has further emphasized that the law excluding the jurisdiction of the High Court under Articles 226 and 227 must set up another effective institutional mechanism or authority and vest the power of juridicial review in it. He has also indicated some measures to ensure proper selection of the members of the Tribunal so that it may have the competence, objectivity and impartiality in order to inspire confidence in the public mind. But it has been clearly stated that the judgment will operate only prospectively and will not invalidate appointments already made to the Administrative Tribunals.

9. We must, therefore, hold that upon the constitution of the Administrative Tribunal under the Act, the jurisdiction, power and authority of this Court under Articles 226/227 stand excluded. By the operation of Section 29(1) of the Act, every suit or other proceeding including the writ proceeding except the appeals pending in this Court shall stand transferred to the Tribunal.

10. The decision of this Court in M.B. Shukla's case holding to the contrary cannot be said to have laid down the correct law. In this view of the matter, the second question as to whether action in writ jurisdiction under Articles 226/227 is "proceeding" within the meaning of that expression used in Section 29(1) of the Act becomes academic.

11. Before parting with this case we have to note the submission made by Sri R.R. Yadav, learned Counsel for the Petitioner in Writ Petition No. 3839 of 1985 Sheo Bahadur Yadav v. The Union of India. The counsel relying upon the judgment of the Supreme Court in S.P. Sampath Kumar case urged that the Act as it stands ought to be declared as void unless necessary amendments suggested by the Supreme Court are carried out by the Central Government before March 31, 1987 and in event of the Central Government not doing so, the Petitioner shall be given liberty to revise his writ petition. We do not think it is necessary to give any such liberty to the Petitioner. It has been clearly stated by the Supreme Court in the said case that the judgment will operate only prospectively and will not invalidate the appointments already made to the Administrative Tribunals by the Central Government. However, it is open to the Petitioner to take such steps as he feels after March 31, 1987.

12. Before concluding, we must also point out that the writ petitions relating to service matters filed after November 1, 1985 will have to be dismissed with liberty to the parties to approach the Central Administrative Tribunal and the writ petitions filed earlier to the said date shall stand transferred to the Central

Administrative Tribunal for disposal in accordance with law.

13. We direct accordingly.