Sarwan Singh Lamba and Others

Vs

Union of India and Others

Civil Appeal No. 5061 of 1993 with C.A. No. 5062 of 1993, SLP No. 17232 of 1993 and C.A. No. 7486 of 1993

(CJI M. N. Vankatachaliah, S. P. Bharucha, S. C. Agarwal JJ)

03.05.1994

ORDER

1. These appeals and the special leave petition are directed against the judgment of the high Court of Madhya Pradesh dated 29-7-1993 whereby the High Court has quashed the appointment of Shri R. P. Kapur (appellant in CA No. 5061 of 1993) as Vice-Chairman of the Madhya Pradesh State Administrative Tribunal (hereinafter referred to as 'the tribunal') and S/Shri Sarwan Singh Lamba, Girija Shankar Patel, P. M. Rajwade and Dr. Narinder Nath Veermani (appellants in CA No. 5061 of 1993) as members of the Tribunal. The Tribunal was constituted under the provision of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'the Act') on 29-7-1988. It consists of the Chairman, the Vice-Chairman and the judicial as well as administrative members. The seat of the Tribunal is at Jabalpur and it has benches at Gwalior, Indore and Bhopal, Shri R. P. Kapur was appointed as Vice-Chairman of the Tribunal by order dated 28-8-1991 and the four members aforementioned were appointed as the members of the Tribunal by order dated 27-5-1991. A writ petition was filed in the High Court of Madhya Pradesh challenging the said appointments which has been allowed by the High Court by the impugned judgment.

2. The Act has been enacted in exercise of the power conferred by clause (1) of Article 323-A of the Constitution which was introduced in the Constitution by the Constitution (Forty-second Amendment) Act, 1976. The said clause empowers Parliament to provide, by law, for 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. In sub-clause (d) of clause (2) of Article 323-A, it is provided that a law made under clause (1) may 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). The Act, in Section 28, provides for exclusion of the jurisdiction vested in the High Courts under Articles 226 and 227 of the Constitution in respect of service matters specified in Section 28 of the Act.

3. The constitutional validity of the various provisions of the Act was considered by a Constitution Bench of this Court in S. P. Sampath Kumar v. Union of India. It was argued that the exclusion of the jurisdiction vested in the High Court under Articles 226 and 227 of the Constitution in respect of service matters and vesting of such jurisdiction in the Administrative Tribunals constituted under the Act was destructive of the power of judicial review which is a basic and essential feature of the Constitution. While dealing with the said contention Misra, J. (as the learned Chief Justice then was), who delivered the main judgment, has observed : (SCR pp. 453-54 : SCC PP 139-40, paras 17

and 18)

> "What, however, has to be kept in view is that the Tribunal should be a real substitute for the High Court - not only in from and de jure but in content and de facto.
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The High Courts have been functioning over a century and a quarter an until the Federal Court was established under the Government of India Act, 1935, used to be the highest courts within their respective jurisdictions subject to an appeal to the Privy Council in a limited category of cases. In this long period of about six scores of years, the High Courts have played their role effectively, efficiently as also satisfactorily. The litigant in this country has seasoned himself to look up to the High Court as the unfailing protector of his person, property and honour. The institution has served its purpose very well and the common man has thus come to repose great confidence therein. Disciplined, independent and trained judges well versed in law and working with all openness in an unattached and objective manner have ensured dispensation of justices over the years. Aggrieved people approach the Court - the social mechanism to act as the arbiter - not under legal obligation but under the belief and faith that justice shall be done to them and the State's authorities would implement the decision of the Court. It is, therefore, of paramount importance that the substitute institution - the Tribunal - must be a worthy successor of the High Court in all respects."

Similarly Bhagwati, C.J. has stated : (SCR p. 444 : SCC PP. 130-31, para 4)

> "Consequently, the impugned Act excluding the jurisdiction of the High Court under articles 226 and 227 in respect of service matters and vesting such jurisdiction in the Administrative Tribunal can pass the test of constitutionality as being within the ambit and coverage of clause (2)(d) of Article 323-A, only if it can be shown that the Administrative Tribunal set up under the impugned Act is equally efficacious as the High Court, so far as the power of judicial review over service matters is concerned."

4. One of the provision of the Act under challenge was Section 6 which provides for appointment of Chairman, Vice-Chairman, or other members of the Central Administrative Tribunal and the State Administrative Tribunals. Sub-section (4) provides that the Chairman, Vice-Chairman and every other member of the Central Administrative Tribunal shall be appointed by the President. Sub-section (5) provides that the Chairman, Vice-Chairman and every other member of and Administrative Tribunal for a State shall be appointed by the President after consultation with the Governor of the State concerned. By Act No. 19 of 1986, the provisions of Section 6 were amended with effect from 22-1-1986 and sub-section (7) was inserted which provided as under :

> "No appointment of a person possessing the qualifications specified in sub-section (3) as the Chairman, a Vice-Chairman or a Judicial Member shall be made except after consultation with the Chief Justice of India."

5. Dealing with the said provisions contained in Section 6, Misra, J. has observed : (SCR pp. 455-56 : SCC pp. 140-41, para 21)

> "So far as the Chairman is concerned, we are of the view that ordinarily a retiring or retired Chief Justice of a High Court or when such a person is not available, a Senior Judge of proved ability either in office or retired should be appointed. That office should for all practical purposes be equated with the office of Chief Justice of a High

Court.

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We do not want to say anything about Vice-Chairman and members dealt with in sub-sections (2), (3) or (3-A) because so far as their selection is concerned, we are of the view that such selection when it is not of a sitting Judge or retired Judge of a High Court should be done by a high-powered committee with a sitting Judge of the Supreme Court to be nominated by the Chief Justice of India as its Chairman. This will ensure selection of proper and competent people to man these high offices of trust and help to build up reputation and acceptability. Once the qualifications indicated for appointment of Chairman are adopted and the manner or selection of Vice-Chairman and members is followed, were are inclined to think that the manning of the Tribunal would be proper and conducive to appropriate functioning. We do not propose to strike down the prescriptions containing different requirements but would commend to the Central Government to take prompt steps to bring the provisions in accord with what we have indicated. We must stated that unless the same be done, the constitution of the Tribunal as a substitute of the High Court would be open to challenge. We hasten to add that our judgment shall operate prospectively and would not affect appointments already made to the offices of Vice-Chairman and members - both administrative and judicial."

The learned Judge also indicated that the amendments to remove the defects found in the Act should be brought about within a reasonable period but not beyond 31-3-1987.

6. Bhagwati, C.J., expressing his agreement with the judgment of Misra, J., has taken a slightly different view. He has stated : (SCR pp. 446 and 447-48 : SCC pp. 132-33 and p. 134, para 7)

"So far as the appointment of judicial members of the Administrative Tribunal is concerned, there is a provision introduced in the impugned Act by way of amendment that the judicial members shall be appointed by the Government concerned in consultation with the Chief Justice of India. Obviously no exception can be taken to this provision, because even so far as Judges of the High Court are concerned, their appointment is required to be made by the President inter alia in consultation with the Chief Justice of India. But so far as the appointment of chairman, Vice-Chairmen and administrative members is concerned, the sole and exclusive power to make such appointment is conferred on the Government under the impugned Act. There is no obligation cast on the Government to consult the Chief Justice of India or to follow any particular selection procedure in this behalf. The result is that it is left to the absolute unfettered discretion of the Government to appoint such person or persons as it likes as Chairman, Vice-Chairman and administrative members of the Administrative Tribunal. Now it may be noted that almost all cases in regard to service matters which come before the Administrative Tribunal would be against the Government or any of its officers and it would not at all be conducive to judicial independence to leave unfettered and unrestricted discretion in the executive to appoint the Chairman, Vice-Chairmen and administrative members,

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The Constitution-makes have made anxious provision to secure total independence of the judiciary from executive pressure of influence. Obviously, therefore, 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 possibility of executive pressure or influence must also be ensured to the Chairman, Vice-Chairman 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. I am, therefore, of the view that 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 and ordinarily the recommendation of the Chief Justice of India 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. There is also another alternative which may be adopted by the Government for making appointments of Chairman, Vice-Chairman and members and that may be by setting up 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. Both these modes of appointment will ensure selection of proper and competent persons to man the Administrative Tribunal and give it prestige and reputation which would inspire confidence in the public mind in regard to the competence, objectivity and impartiality of those manning the Administrative Tribunal. If either of these two modes of appointment is adopted, it would save the impugned Act from invalidation. Otherwise, it will be outside the scope of the power conferred on Parliament under Article 323-A. I would, however hasten to add that this judgment will operate only prospectively and will not invalidate appointments already made to the Administrative Tribunal. But if any appointments of Vice-Chairmen or administrative members are to be made hereafter, the same shall be made by the Government in accordance with either of the aforesaid two modes of appointments." Khalid, Oza and Dutt, JJ., have expressed their agreement with both the judgments.

7. The divergence between the views of Bhagwati, C.J., and Misra, J., has to be noticed. While Misra, J. indicated that selection of the Vice-Chairman an members when it is not of a sitting Judge or retired Judge of a High Court should be made by a High Powered Committee with a sitting Judge of the Supreme Court to be nominated by the Chief Justice of India as its Chairman, Bhagwati, C.J. expressed the view that this mode of selection through a High Powered Selection Committee was one of the two modes and the other mode suggested by him was that the appointment should be made in consultation with the Chief Justice of India and that the recommendations of the Chief Justice of India must be accepted unless there are cogent reasons and in that events reasons must be disclosed to the Chief Justice of India and his response must be invited to such reasons.

8. The position was thus clarified by the Constitution Bench in the order dated 5-5-1987 (reported in S. P. Sampath Kumar v. Union of India (II) (1987 Supp SCC 734 : 1988 SCC (L & S) 358 : (1988) 6 ATC 614)) on the petition for review filed by the Union of India : (SCC p. 736. para 1)

> "Having considered the matte carefully, we are of opinion that in the case of recruitment to the Central Administrative Tribunal 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, while in the case of recruitment to the State Administrative Tribunals, the High Powered Selection Committee should be headed by sitting Judge of the High Court to be nominated by the Chief Justice of the High Court concerned."

9. By the said order, time for introducing legislation to give effect to the observations made by the Court was extended up to 31-7-1987. The said time was further extended up to 31-10-1987 and thereafter up to 31-1-1988 (see SCC pp. 736 and 737). A petition for direction was filed on behalf of the Union of India wherein it was submitted that selection by a High Powered Committee would involve considerable time and it was likely to result in complications in establishment of benches in certain places and it was prayed that the order dated 5-5-1987 may be clarified and/or modified and instead of the said mode of appointment the Court may prescribe consultation with the Chief Justice of India alone because it would expedite the selection process and will also ensure the quality of appointments. The said application was, however, dismissed by order dated 11-11-1987.

10. Thereafter certain amendments were introduced in the Act by Act No. 51 of 1987 with effect from 22-12-1987 and sub-section (7) of Section 6 was substitute by the following provision :

> "No appointment of a person possessing the qualifications specified in his section as the Chairman, a Vice-Chairman or a member shall be made except after consultation with the Chief Justice of India."

This would show that instead of the mode indicated by the Court in Sampath Kumar (1987 Supp SCC 734 : 1988 SCC (L & S) 38 : (1988) 6 ATC 614) Parliament has chosen to adopt the other mode suggested by Bhagwati, C.J. which was not accepted by this Court.

11. On 15-4-1991, the Government of India issued a circular outlining the procedure of selection for appointment as Vice-Chairmen and members of the State Administrative Tribunals which provided for constitution of a Selection Committee consisting of the Chief Justice of the High Court, the Chief Secretary of the State and the Secretary, Law Department of the State.

12. The High Court has observed in the impugned judgment :

> "We have therefore no hesitation in holding that if after the decision in Sampath Kumar case the selection of member/Vice-Chairman of Tribunal is not by a High Power Selection Committee as per the decision of the Supreme Court in Sampath Kumar case they would be illegal, void an inoperative. After saving the Act from being declared ultra vires by making a solemn representation through the Attorney General to the Supreme Court of India that necessary corrective measures would be taken, it is not open to Union of India to canvass before this Court that it not necessary to follow the procedure laid down by the Supreme Court as it was not the law laid down and that the law as it stands does not require such a procedure to be followed.
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> Approval of the Chief Justice of India obtained without complying with a decision of a five-Judge Bench of the Supreme Court would be of no consequence and would not render the selection valid. Approval granted on administrative side by the Chief Justice of India cannot be used to dilute or defeat a decision rendered on judicial side by the Constitution Bench of the Supreme Court of India."

The said view has been assailed by the appellants and it has been urged that amendment introduced in Section 6 is in conformity with the decision in Sampath Kumar (supra).

13. These matters raise questions of general importance involving the validity of the provisions of section 6 as amended by Act No. 51 of 1987 as well as of the appointments made in accordance with the said provisions. Having regard to the importance of these issues which affect the constitution of the Central Administrative Tribunal and the State Administrative Tribunals we are of the view that these mattes should be heard by a Constitution Bench of the Court. The matters are, therefore, referred for consideration by a Constitution Bench.

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