

State of A. P. and Others

Vs

K. Mohanlal and Another

Civil Appeals Nos. 2734-2735 of 1998

(S. R. Babu, Sujata V. Manohar JJ)

14.05.1998

JUDGMENT

SMT. SUJATA V. MANOHAR, J. –

1. Leave granted.

2. On 29-6-1982, the State of Andhra Pradesh promulgated the Andhra Pradesh Land-Grabbing (Prohibition) Ordinance, 1982. It was subsequently replaced by the Andhra Pradesh Land-Grabbing (Prohibition) Act, 1982. The Act has since been amended twice - once by the Andhra Pradesh Act 16 of 1987 and again by the Andhra Pradesh Act 6 of 1988.

3. In 1996, a practising advocate filed a writ petition before the Andhra Pradesh High Court challenging the constitutional validity of the Andhra Pradesh Land-Grabbing (Prohibition) Act, 1982. One N. Venkatesh also addressed a letter to the Chief Justice of the Andhra Pradesh High Court with a press clipping relating to the appointments to the Special Court constituted under the Andhra Pradesh Land-Grabbing (Prohibition) Act, 1982, which was treated as a writ petition. Both these petitions were heard together. By the impugned judgment, the Andhra Pradesh High Court gave certain directions which can be summarised as follows :

(1) The State shall convey to the Registrar of the High Court all material pertaining to the qualifications and ability/suitability etc. of the existing incumbents both Judicial Members and Revenue Members of the Special Court constituted under the said Act forthwith;

(2) The Registrar shall place the material so received before the Chief Justice of the High Court and shall convey the orders of the Chief Justice of the High Court in this behalf to the Chief Secretary to the Government;

(3) The State is restrained from making any appointments of Judicial Members and Revenue Members without "the consultation in respect of the selection of such Member/Members with the Chief Justice of the High Court"; and

(4) The State shall decide whether any incumbent Judicial Member/Revenue Member shall continue after receiving the opinion in this behalf of the Chief Justice of the High Court and such incumbent shall cease to function in case opinion adverse to his continuance is conveyed to him.

4. The present appeals are filed from the above judgment and order.

5. The Statement of Objects and Reasons for the said Act states :

"It has come to the notice of the Government that there are organised attempts on the part of certain lawless persons operating individually and in groups to grab either by force or by deceit or otherwise lands belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf or any other private person. The land-grabbers are forming bogus cooperative housing societies or setting up fictitious claims and indulging in large-scale and unprecedented and fraudulent sales of land through unscrupulous real estate dealers or otherwise ..."

The Special Court has been set up under the said Act to deal with such acts of land-grabbing.

6. The challenge in the proceedings is to the constitutional validity of Section 7 relating to the appointments to be made to the Special Court. The relevant parts of Section 7, as it stands at present, are as follows :

"7. Constitution of Special Courts. - (1) The Government may, for the purpose of providing speedy enquiry into any alleged act of land-grabbing, and trial of cases in respect of the ownership and title to, or lawful possession of, the land grabbed, by notification, constitute a Special Court.

(2) A Special Court shall consist of a Chairman and four other members, to be appointed by the Government.

(3) The Chairman shall be a person who is or has been a Judge of a High Court and of the other four members, two shall be persons who are or have been District Judges (hereinafter referred to as Judicial Members) and the other two members shall be persons who hold or have held a post not below the rank of a District Collector (hereinafter referred to as Revenue members) :

Provided that the appointment of a person who was a Judge of a High Court as the Chairman of the Special Court shall be made after consultation with the Chief Justice of the High Court concerned :

Provided further that where a sitting Judge of a High Court is to be appointed as Chairman, such appointment shall be made after nomination by the Chief Justice of the High Court concerned, with the concurrence of the Chief Justice of India.

#(4)-(6) \* \* \*"###

7. Article 323-B of the Constitution provides that the appropriate legislature may, by law, provide for the adjudication or trial by tribunal of any dispute, complaint or offences in respect to all or any of the matters specified in clause (2) with respect to which such legislature has a power to make the laws. Clause (2)(d) refers, inter alia, to any rights in land or the extinguishment or modification of any such rights. The Andhra Pradesh High Court has, therefore, rightly held that the Act which sets up a Special Court for land-grabbing cases, is within the legislative competence of the State Government.

8. The original petitioners had challenged the constitutional validity of Section 7 relating to the Special Court. The Chairman of the Special Court is required to be either a sitting or a retired Judge of a High Court. The proviso to Section 7(3) prescribes that the appointment of a person who was a Judge of a High Court as Chairman of the Special Court shall be made after consultation with the Chief Justice of the High Court concerned. It also provides that when the Chairman is a sitting Judge, his appointment shall be on nomination by the Chief Justice of the High Court concerned, with the concurrence of the Chief Justice of India. It is, however, contended that in the case of other members, that is to say, two persons who are or have been District Judges and two persons who hold or have held a post not below the rank of a District Collector, there is no provision for consultation with the Chief Justice of the High Court concerned. It is, therefore, contended that the constitution of such a tribunal is unconstitutional. It is contended that the members of a tribunal constituted under Article 323-B must enjoy the same degree of independence and freedom from executive influence, as is enjoyed by the higher judiciary because some of the jurisdiction of the judiciary is transferred to the Special Court or tribunal. If there is no consultation with the Chief Justice of the High Court in the appointments to the Special Court or tribunal, this independence will be affected.

9. Reliance is placed on certain observations of this Court in *S. P. Sampath Kumar v. Union of India* ((1987) 1 SCC 124 : (1987) 2 ATC 82). In *SR Sampath Kumar* ((1987) 1 SCC 124 : (1987) 2 ATC 82) this Court (at p. 144) observed :

"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 provisions of the impugned Act would be rendered invalid."

This Court was required to make these observations because even the power of judicial review of the decisions of the Tribunal under Articles 226, 227 and 32 of the Constitution was taken away under Article 323-B(3)(d). But in the case of *L. Chandra Kumar v. Union of India* ((1997) 3 SCC 261 : 1997 SCC (L&S) 577) this Court has held that the power of judicial review vested in the High Courts under Articles 226 and 227 and in the Supreme Court under Article 32 of the Constitution, is an integral and essential feature of the Constitution constituting a part of its a basic structure. Therefore, the power of judicial review cannot be ousted or excluded. This Court has accordingly held clause (3)(d) of Article 323-B to be unconstitutional. In other words, in respect of the decisions of the Administrative Tribunals and/or Special Courts, the High Court's power of judicial review in respect of its decisions is now expressly preserved as a basic feature of the Constitution under the above judgment. The power of the High Court, therefore, to judicially review the decisions of the Special Court under the said Act also remains.

10. If this is so, then the observations in the case of *S. P. Sampath Kumar* ((1987) 1 SCC 124 : (1987) 2 ATC 82) to which our attention was drawn, will not now apply. Undoubtedly it is highly desirable that Administrative Tribunals enjoy the same degree of independence as judicial bodies, if the independence of the judiciary is not to be diluted by creation of tribunals that do not enjoy the same degree of independence. Nevertheless, the power of judicial review granted under the Constitution to the higher judiciary under Articles 226, 227 and 32 of the Constitution is an important check on the malfunctioning of tribunals. In this context, in *L. Chandra Kumar* case

((1997) 3 SCC 261 : 1997 SCC (L&S) 577) (at p.301) this Court has expressly observed : (SCC para 78)

"The constitutional safeguards which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the subordinate judiciary or with those who man tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this Court under Article 32 of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure."

11. In the perspective of these observations, it would not be correct to hold that because the members of the Special Court, in the present case, can be appointed by the Government without consulting the Chief Justice of the State, the Special Court is an unconstitutional court, since its members do not enjoy the same degree of independence as the members of the higher judiciary, especially when the Chairman's appointment is in consultation with the Chief Justice of the State. Also, the remedy under Articles 226 and 227 is available against the orders of the Special Court.

12. Article 233 of the Constitution also does not apply to the appointment of retired District Judges as Judicial Members of the Special Court or to the appointment of Revenue Members. In respect of a sitting District Judge, however, appointment cannot be made by the State Government without complying with Article 235. Under this article, the control over District Courts and courts subordinate thereto, including posting and promotion and the grant of leave to persons belonging to the judicial service of the State shall be vested in the High Court. A District Judge in the a judicial service of the State, therefore, cannot be appointed by the Government to the Special Court without the consent of the High Court. This condition will have to be read into Section 7 to make it valid. In respect of the retired Judges of the District Courts and the Revenue Officers not below the rank of a District Collector, we do not see any reason why the authority to appoint, which is given to the Government under Section 7 of the said Act, cannot be upheld. A composite tribunal consisting of Judicial and Administrative Members may be constituted in the manner prescribed by law. It may or may not enjoy the same degree of independence as the higher judiciary of the country. Howsoever desirable that independence may be, its absence will not per se, make the tribunal unconstitutional since its orders can be "corrected" by the higher judiciary as held in L. Chandra Kumar ((1997) 3 SCC 261 : 1997 SCC (L&S) 577).

13. In the present case, there are some additional safeguards. The appointment of the Chairman has to be in consultation with the Chief Justice of the High Court if he is a retired High Court Judge or it has to be of a person nominated by him, if he is a sitting High Court Judge, with the concurrence of the Chief Justice of India. This will go a long way towards securing the kind of independence that one is looking for in such a Special Court. However, Section 7 cannot be considered as violative of any provision of the Constitution. Our attention was drawn to a decision of this Court (to which one of us was a party) in the case of State of Maharashtra v. Labour Law Practitioners' Assn. ((1998) 2 SCC 688 : 1998 SCC (L&S) 657 : (1998) 1 Scale 565) The question considered in that case was somewhat different from the question before us here. In that case, the question was whether a member of the executive could be appointed to a service which was held to be a judicial service of the State. This Court held that he could not be so appointed. In the present case the said Special Court is not a part of the judicial service of the State. It is an Administrative Tribunal with a mixed

composition of Judicial and Revenue Members. The appointments of retired District Judges and Revenue Members do not attract Article 234.

14. Mr. Dipankar Gupta, learned counsel who was gracious enough to appear before us *amicus curiae* at our request, drew our attention to a large number of such tribunals with a mixed composition constituted, for example, under the Consumer Protection Act, 1986, under the Income Tax Act, 1961, under the National Environment Tribunal Act, 1995, under the Sick Industrial Companies (Special Provisions) Act, 1985 and so on. From the observations of this Court in the cases of *L. Chandra Kumar* ((1997) 3 SCC 261 : 1997 SCC (L&S) 577) and *S. P. Sampath Kumar* ((1987) 1 SCC 124 : (1987) 2 ATC 82) it would appear that the power of judicial review which the High Court as well as this Court exercises under Articles 226 and 227 in respect of the High Court and Article 32 in respect of this Court has been looked upon as a safeguard against improper functioning of such tribunals. Undoubtedly, with the increase in the number of such tribunals, and the vesting in them of jurisdiction which had earlier vested in the judiciary, the constitutional guarantee of independence of the judiciary may get, to some extent, diluted. However, in the light of the express provisions of Part XIV of the Constitution containing Articles 323-A and 323-B, and the observations of this Court in *L. Chandra Kumar* ((1997) 3 SCC 261 : 1997 SCC (L&S) 577) it would not be correct to hold that such tribunals are unconstitutional, at least when the appointment of the Chairman of the Tribunal is in consultation with/nomination by the Chief Justice of the High Court.

15. The High Court, therefore, was not right in giving directions for mandatory consultation with the Chief Justice of the High Court in the case of appointment of all members including Revenue Members of the Special Court. The High Court was also not right in directing that existing appointments made to the Special Court should be placed before it for the opinion of the Chief Justice of the High Court, and in giving the directions it did.

16. The impugned judgment and order of the High Court is, therefore, set aside. The appeals are allowed, with no order as to costs.