Dr. Duryodhan Sahu and Others

Vs

Jitendra Kumar Mishra and Others

Civil Appeals Nos. 4215-4217 of 1998 and 4212-4214 of 1998

(S. C. Agarwal, S. Saghir Ahmed, M. Srinivasan JJ)

25.08.1998

JUDGMENT

SRINIVASAN, J.

1. Leave granted.

2. Two questions have arisen for decision :

> (i) whether an Administrative Tribunal constituted under the Administrative Tribunals Act, 1985 (hereinafter referred to as "the Act") can entertain a public interest litigation, and
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> (ii) whether on the facts of this case, the Tribunal has exceeded its jurisdiction in passing the impugned order ?

3. The facts are as follows :

The petitioner in SLPs Nos. 10472-74 of 1995 hereinafter referred to as the petitioner, a qualified surgeon with MS degree in General Surgery had been working in the Department of Gastroenterology of S.C.B. Medical College, Cuttack as an Assistant Surgeon from 17-9-1987. Earlier he worked as a Lecturer in General Surgery from 11-6-1984 to 17-9-1986. From 17-9-1987, he was assisting the Professor and Head of the Department of Surgical Gastroenterology for about five years during which period he had acquired "special training/experience" in the said subject.

4. The Orissa Public Service Commission caused Advertisement No. 27 of 1991/92 inviting applications for the posts of Junior Teacher (Lecturer) in several disciplines including Surgical Gastroenterology. The last date for receipt of applications was 15-5-1992. The minimum educational qualification was prescribed as under :

> "(a) A candidate must have obtained a postgraduate degree in the speciality/higher speciality concerned or any other equivalent degree or qualification prescribed by the IMC/Dental Council of India as the case may be for all the above posts.
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> (b) For the post of Surgical Gastroenterology, candidates possessing MS (General Surgical) degree with 2 years' special training in Surgical Gastroenterology from the institution recognised by the MCI, are eligible."

5. Even before the issue of advertisement, the Health and Family Welfare Department of the

Government of Orissa sought clarification regarding qualification for appointment to the post of Lecturer in the Department of Gastroenterology vide Letter No. 43633/Hd 26-12-1990. The Medical Council of India (for short MCI) in Letter No. MCI-12(1)/91-Med/21954 dated 27-12-1991 replied that the matter was considered by the Postgraduate Medical Education Committee of the Council at its meeting and it was decided as under :

> "The Postgraduate Committee agreed for the appointment of teachers as Lecturers in the Department of Gastroenterology possessing MS (General Surgery) with 2 years' special training in Surgical Gastroenterology which should be in a recognised institution as prescribed by the MCI in recommendations on teachers' eligibility qualifications for other similar departments. This arrangement is agreeable for five years till sufficient people are available with the postgraduate qualification in Surgical Gastroenterology."

It was only on that basis that the minimum of two years' special training in a recognised institution was prescribed as part of the minimum qualification for the post of Lecturer in the case of candidates possessing MS (General Surgery) degree.

6. The institution in which the petitioner was working, namely S.C.B. Medical College is also one of the institutions recognised by the MCI. In response to the aforesaid advertisement, the petitioner applied for the post of Junior Teacher (Lecturer) in the discipline of Surgical Gastroenterology. Six other persons had also applied for the same post. The case of the petitioner and that of Dr. P. K. Dehata were referred to the Director of Medical Education & Training by the Public Service Commission for his opinion on their eligibility for selection. The Director expressed his opinion in his Letter No. 1387MET, dated 20-7-1992 that the petitioner was qualified to be considered as per MCI rules along with other eligible candidates. The petitioner and Dr. M. K. Mohapatra were called for the viva voce test. The name of Dr. Mohapatra was recommended to the Government along with the advice that the Commission had maintained a reserve list of suitable candidates for a period of one year from the date of recommendation. Dr. Mohapatra was appointed as Junior Teacher.

7. The Government found that the Department of Surgical Gastroenterology was understaffed as it had only one Professor and one Lecturer and it was not in accordance with the MCI Pattern. Hence the Government created one more post of Lecturer on 25-8-1993. On the same day, the Government requested the Public Service Commission to recommend the name of a suitable candidate from the reserve list. On 30-8-1993, the Commission recommended the name of the petitioner for appointment.

8. At that stage, one Chandi Charan Routray in his capacity as General Secretary, Cuttack Surakhya Committee filed OA No. 1439 of 1993 before the Principal Bench of the Central Administrative Tribunal at Bhubaneswar. Another application OA No. 1630 of 1993 was filed by the Cuttack Surakhya Committee through Jitendra Kumar Mishra before the same Bench. A third application was filed before the Cuttack Bench in OA No. 1614 (C) of 1994 by one Nibas Chandra Mishra. The prayers in all the three applications are identical. They are for :

> (i) quashing the order of the Government dated 25-8-1993 creating one more post of Junior Teacher.
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> (ii) debarring the petitioner from being appointed as Junior Teacher, and

(iii) preventing the Government from appointing any candidate as Lecturer without requisite qualification and training in the superspeciality. The averments in all the three applications were almost identical. The substance of the allegations was that the petitioner did not possess the qualifications prescribed for the post of Lecturer and the Government in order to accommodate him created another post which was not advertised. It was alleged that the petitioner had exerted influence over the authorities concerned and managed to secure the appointment. According to the applicants, the appointment was not only mala fide and illegal but it was also against public interest.

9. The applications were opposed by the Government and the petitioner on merits as well as on grounds of maintainability. The Tribunal held that the applications were maintainable at the instance of the applicants. As regards the qualification of the petitioner, the Tribunal observed as follows :

"The most important question to be decided is whether Dr. Sahoo possesses the requisite qualification and eligibility for the post of Lecturer in Surgical Gastroenterology. A perusal of the clarificatory letter issued by the IMC to the Secretary, Health & FW Department (Annexure I) would indicate that the prescribed qualification is Master's degree in Surgical Gastroenterology. On account of non-availability of candidates possessing that qualification, a temporary relaxation was allowed for a short period of 5 years till doctors with MS in Surgical Gastroenterology are available. In lieu of MS in Gastroenterology, MS in General Surgery with two years' special training in the discipline, was allowed. For interpreting the expression 'special training in a recognised institution as prescribed by the IMC', we would have very much valued the views of the IMC itself. But the views of the IMC, who are also parties to the litigation, unfortunately are not available as no counter or submission has been filed on their behalf. But it stands to common sense that special training in a superspeciality which is to be substituted for a Master's degree in that discipline should be in an apex medical institution like the AIIMS, specially notified by the IMC for the purpose. There is no indication to show that S.C.B. Medical College has been recognized as an institution for imparting special training in Surgical Gastroenterology. The government counter also does not say so. On the other hand, certain averments in the government counter that the said Department in S.C.B. Medical College is understaffed and that it was manned only by a Professor till Dr. Mohapatra joined as a Lecturer, points to the conclusion that it was not equipped with adequate facilities for imparting special training. No doubt Dr. Sahoo has acquired sufficient practical experience by assisting the Head of the Department for a long period of six years and the list of publications he has to his credit, as given in his counter, would support such a view. But it cannot be said that he has acquired the special training indicated by the IMC in their letter since the S.C.B. Medical College has not been notified by the IMC as a recognised institution for imparting such training in that superspeciality."

10. On the above reasoning, the Tribunal granted the second prayer of the applicants and restrained the appointment of the petitioner as a Lecturer. The Tribunal refused to quash the government order creating the post and rejected the first prayer. The Tribunal directed the Health and Family Welfare Department to take appropriate steps for filling up the post after complying with the relevant statutory provisions and issuing a fresh advertisement through the Public Service Commission. The petitioner has challenged the said order in SLPs Nos. 10472-10474 of 1995. The State Government has filed SLPs Nos. 18714-18716 of 1995 against the same order. It is in such circumstances that the

two questions set out in the beginning arise for consideration.

11. These SLPs came up for hearing on 15-2-1996 before a Bench of two Judges. The Bench passed the following order :

> "Whether a public interest litigation can be entertained by the Administrative Tribunal under Section 19 of the Administrative Tribunals Act, 1985 is the question raised by the appellant-State of Orissa & Ors. Section 19, inter alia, provides that a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for redressal of his grievance. Prima facie, it appears that a public interest litigant is not a person aggrieved in that sense. The appellant-State relies on certain observations made by K. Ramaswamy, J. in R. K. Jain v. Union of India ((1993) 4 SCC 119 : 1993 SCC (L&S) 1128 : (1993) 25 ATC 464) which are to the following effect :
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> 'Shri Harish Chander, admittedly was the Senior Vice-President at the relevant time. The contention of Shri Thakur of the need to evaluate the comparative merits of Mr. Harish Chander and Mr. Kalyansundaram, a seniormost member for appointment as President would not be gone into in a public interest litigation. Only in a proceedings initiated by an aggrieved person it may be open to be considered. This writ petition is also not a writ of quo warranto. In service jurisprudence, it is settled law that it is for the aggrieved person, i.e., non-appointee to assail the legality of the offending action. The third party has no locus standi to canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the petitioner, a public-spirited person.'
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> These observations were not specifically concurred to by the other two Members of the Bench (one of us being one such Member). The Administrative Service Tribunals have been recognised by this Court to be substitutes of the High Court and other courts having had jurisdiction in the matter. The High Court under Article 226 of the Constitution has power to issue a writ of quo warranto and that can undeniably be sought by any person; not necessarily a person aggrieved. Would it be otherwise and locus standi being determined purely on the axis of Section 19, the purpose of creating the Service Tribunal would seemingly be frustrated. It may therefore crop up that the above observations of K. Ramaswamy, J. may attract an exception. In any case, the matter is important in order to define the jurisdiction of the Tribunal and therefore in the fitness of things, should be placed before a three-Member Bench. We therefore direct these special leave petitions to be heard by a three-Member Bench."

12. We have heard counsel on both sides at length. Several rulings have been relied on by them though in none of them, the question arose directly for consideration. The question as to maintainability of a public interest litigation before the Tribunal depends for its answer on the provisions of the Act. The Tribunal having been created by the Act, the scope and extent of its jurisdiction have to be determined by interpreting the provisions thereof. In S. P. Sampath Kumar v. Union of India ((1987) 1 SCC 124 : (1987) 2 ATC 82) it was held that the Tribunals constituted under the Act were effective substitutes to the High Courts in the scheme of administration of justice and they were entitled to exercise powers thereof. It was observed that they were real substitutes not only in form and de jure but in content and de facto. On that premise, the Court held that the power of judicial review exercised by High Courts in service matters under Articles 226 and

227 was completely excluded. It may be noticed that the order of reference dated 15-2-1996 extracted in the earlier paragraph makes a specific mention of this aspect of the matter. If that view had continued to prevail, the approach to the question might have been different.

13. But the law has now been declared differently in L. Chandra Kumar v. Union of India ((1997) 3 SCC 261 : 1997 SCC (L&S) 577) that the Tribunals have to perform only a "supplemental - as opposed to a substitutional - role" in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. This Court has held that the powers of the High Courts under Articles 226/227 are not taken away by the Act. It is only against such a backdrop that the jurisdiction of the Tribunal under the Act to entertain a public interest litigation has to be decided. No doubt, it is contended by learned counsel for the appellants that even from the inception of the Act, public interest litigations could be entertained only by the High Courts in exercise of their extraordinary jurisdiction and plenary powers and as such powers were not available to the Tribunals, the latter could never have entertained such litigations. It is not necessary for us to consider that contention. As the status of the Tribunals has now been settled in L. Chandra Kumar ((1997) 3 SCC 261 : 1997 SCC (L&S) 577) we will discuss the question in the light of the said pronouncement.

14. Section 14 of the Act provides that the Central Administrative Tribunal shall exercise all the jurisdiction, powers and authority exercisable by all courts except the Supreme Court immediately before the appointed day in relation to matters set out in the section. Similarly, Section 15 provides for the jurisdiction, powers and authority of the State Administrative Tribunals in relation to matters set out therein. Sections 19 to 27 of the Act deal with the procedure. Section 19 strikes the keynote. Sub-sections (1) and (4) of Section 19 are in the following terms :

> "19. (1) Subject to the other provisions of this Act a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.
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> Explanation. - For the purposes of this sub-section, 'order' means an order made -
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> (a) by the Government or a local or other authority within the territory of India or under the control of the Government of India or by any corporation (or society) owned or controlled by the Government; or
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> (b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation (or society) referred to in clause (a).
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> 19. (4) Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules."

15. Section 20 provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant rules. Section 21 provides for a period of limitation for approaching the Tribunal. A perusal of the above provisions shows that the Tribunal can be approached only by "persons aggrieved" by an order as

defined. The crucial expression "person aggrieved" has to be construed in the context of the Act and the facts of the case.

16. In Thammanna v. K. Veera Reddy ((1980) 4 SCC 62) it was held that although the meaning of the expression "person aggrieved" may vary according to the context of the statute and the facts of the case, nevertheless normally, a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something.

17. In Jasbhai Motibhai Desai v. Roshan Kumar ((1976) 1 SCC 671) the Court held that the expression "aggrieved person" denotes an elastic, and to an extent, an elusive concept. The Court observed : (SCC p. 677, para 13)

> "... It cannot be confined within the bounds of a rigid, exact, and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him."

18. The constitution of Administrative Tribunals was necessitated because of the large pendency of cases relating to service matters in various courts in the country. It was expected that the setting up of Administrative Tribunals to deal exclusively in service matters would go a long way in not only reducing the burden of the courts but also provide to the persons covered by the Tribunals speedy relief in respect of their grievances. The basic idea as evident from the various provisions of the Act is that the Tribunal should quickly redress the grievances in relation to service matters. The definition of "service matters" found in Section 3(q) shows that in relation to a person, the expression means all service matters relating to the conditions of his service. The significance of the word "his" cannot be ignored. Section 3(b) defines the word "application" as an application made under Section 19. The latter section refers to "person aggrieved". In order to bring a matter before the Tribunal, an application has to be made and the same can be made only by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. We have already seen that the word "order" has been defined in the explanation to sub-section (1) of Section 19 so that all matters referred to in Section 3(q) as service matters could be brought before the Tribunal. If in that context Sections 14 and 15 are read, there is no doubt that a total stranger to the service concerned cannot make an application before the Tribunal. If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal, the very object of speedy disposal of service matters would be defeated.

19. Our attention has been drawn to a judgment of the Orissa Administrative Tribunal in Amitarani Khuntia v. State of Orissa ((1996) 1 OLR (CSR) 2). The Tribunal after considering the provisions of the Act held that a private citizen or a stranger having no existing right to any post and not intrinsically concerned with any service matter is not entitled to approach the Tribunal. The following passage in the judgment is relevant :

> "... A reading of the aforesaid provisions would mean that an application for redressal of grievances could be filed only by a 'person aggrieved' within the meaning of the Act.

> Tribunals are constituted under Article 323-A of the Constitution of India. The above article empowers Parliament to enact law providing 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 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 and such law shall specify the jurisdiction, powers and authority which may be exercised by each of the said Tribunals. Thus, it follows that Administrative Tribunals are constituted for adjudication or trial of the disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts. Its jurisdiction and powers have been well defined in the Act. It does not enjoy any plenary power."

We agree with the above reasoning.

20. Learned counsel for the respondents relied upon the decision of this Court in S. P. Gupta v. Union of India (1981 Supp SCC 87 : (1982) 2 SCR 365) and read out several passages from the judgment dealing with the question of "standing". In that case, the Court was not concerned with a Tribunal constituted under a statute. It was discussing the question of "standing" in a proceeding before the High Court or this Court. That ruling cannot help the respondents in the present case. Our attention is also drawn to a judgment in University of Mysore v. C. D. Govinda Rao (AIR 1965 SC 491 : (1964) 4 SCR 575) wherein the scope of a writ of quo warranto has been discussed. That decision will not apply in the present case as there was not application for issue of a writ of quo warranto before the Tribunal. Learned counsel for the respondents submits that the proceedings before the Tribunal are in the nature of quo warranto and it could be filed by any member of the public as he is an aggrieved person in the sense public interest is affected. We have already pointed out that the applications in the present case have been filed before the appointment of the petitioner as a Lecturer and the relevant prayers are to quash the creation of the post itself and preventing authorities from appointing the petitioner as a Lecturer. Hence, the applications filed by the respondents cannot be considered to be quo warranto.

21. In the result, we answer the first question in the negative and hold that the Administrative Tribunal constituted under the Act cannot entertain a public interest litigation at the instance of a total stranger.

22. Turning to the second question, even the facts set out by us earlier would show that the petitioner satisfied the requisite qualifications prescribed for the post of Lecturer. The only contention urged is that the petitioner did not have two years' special training in Surgical Gastroenterology from an institution recognised by the MCI for giving special training. There is no merit in the contention. The list of recognised medical colleges in India published by the MCI contains the name of S.C.B. Medical College, Cuttack at Sl. No. 80. Thus the said College is a recognised institution. The interpretation that the institution should be recognised for giving special training is erroneous. There is no such requirement in the rules.

23. Even the Tribunal has found that the petitioner had acquired sufficient practical experience by assisting the Head of the Department of Surgical Gastroenterology in the said College for a long period of six years and had several publications to his credit. The Tribunal overlooked that the said experience acquired by the petitioner was recognised to be sufficient to satisfy the requisite

qualification of two years' special training by the Director of Medical Education and Training when a reference was made to him by the Orissa Public Service Commission. It was only after getting the matter clarified, the Service Commission called the petitioner for viva voce. Once the authorities concerned are satisfied with the eligibility qualifications of the person concerned, it is not for the Court or the Tribunal to embark upon an investigation of its own to ascertain the qualifications of the said person.

24. In State of Bihar v. Ramesh Chandra ((1997) 4 SCC 43 : 1997 SCC (L&S) 1287) a Division Bench to which one of us (S. C. Agrawal, J.) was a party had occasion to consider a similar regulation prescribing qualifications for appointment of Professor/Associate Professor. The rule used the expression "two years' special training". The High Court held that the appointee did not have the requisite special training and failed to establish that he possessed the same qualification. This Court reversed that conclusion and pointed out that the said person had received more than two years' training in the speciality concerned after obtaining the degree of MS. It was held that the training received as Resident Surgical Officer by the person concerned between 1976 and 1980 could be regarded as special training though the unit concerned was not an independent unit but it was having all the requisite facilities. This Court also referred to the certificate issued by the Head of the Unit and other materials on record and held that the condition of special training for two years was fulfilled.

25. In the present case, we have already referred to the opinion of the Director of Medical Education in the matter of qualifications of the petitioner. There was no justification for the Tribunal to ignore the same. Hence the Tribunal exceeded its jurisdiction by considering a technical question after brushing aside the opinion of the experts and the authorities concerned. There is no material whatever to accept the contention of the respondents that the petitioner wielded influence over the authorities concerned or that the action of the authorities was vitiated by mala fides.

26. In the view we have expressed above, it is unnecessary for us to consider the contention of the appellants that the applications before the Tribunal were not bona fide and the applicants therein had ulterior motives in filing the same.

27. In the result, the appeals are allowed. The judgment and order of the Orissa Administrative Tribunal, Bhubaneswar in OAs Nos. 1439 and 1630 of 1992 and 1614 of 1994 is set aside. There will, however, be no order as to costs.