SUPREME COURT OF INDIA

T.K. Rangarajan

Vs.

Government of Tamil Nadu

(M.B. Shah and A.R Lakshmanan JJ.)

06.08.2003

JUDGMENT

SHAH, J.

Leave granted.

Unprecedented action of the Tamil Nadu Government terminating the services of all employees who have resorted to strike for their demands was challenged before the High Court of Madras by filing writ petitions under Articles 226/227 of the Constitution.

Learned Single Judge by interim order inter alia directed the State Government that suspension and dismissal of employees without conducting any enquiry be kept in abeyance until further orders and such employees be directed to resume duty. That interim order was challenged by the State Government by filing writ appeals. On behalf of Government employees, writ petitions were filed challenging the validity of the Tamil Nadu Essential Services Maintenance Act, 2002 and also the Tamil Nadu Ordinance No.3 of 2003.

The Division Bench of the High Court set aside the interim order and arrived at the conclusion that without exhausting the alternative remedy of approaching the Administrative Tribunal, writ petitions were not maintainable. It was pointed out to the Court that the total detentions were 2211, out of which 74 were ladies and only 165 male and 7 female personnel have so far been enlarged on bail, which reveals pathetic condition of the arrestees. The arrestees were mainly clerks and subordinate staff. The Court, therefore, directed that those who were arrested and lodged in jails be released on bail.

That order is challenged by filing these appeals. For the same reliefs, writ petitions under Article 32 are also filed.

At the outset, it is to be reiterated that under Article 226 of the Constitution, the High Court is empowered to exercise its extra- ordinary jurisdiction to meet unprecedented extra-ordinary situation having no parallel. It is equally true that extra-ordinary powers are required to be sparingly used. The facts of the present case reveal that this was most extra-ordinary case, which called for interference by the High Court, as the State Government had dismissed about two lacs employees for going on strike.

It is true that in L. Chandra Kumar v. Union of India and others [(1997) 3 SCC 261], this Court has held that it will not be open to the employees to directly approach the High Court even where the question of vires of the statutory legislation is challenged. However, this ratio is required to be appreciated in context of the question which was decided by this Court wherein it was sought to be contended that once the Tribunals are established under Article 323-A or Article 323B, jurisdiction of the High Court would be excluded. Negativing the said contention, this Court made it clear that jurisdiction conferred upon the High Court under Article 226 of the Constitution is a part of inviolable basic structure of the Constitution and it cannot be said that such Tribunals are effective substitute of the High Courts in discharging powers of judicial review. It is also established principle that where there is an alternative, effective, efficacious remedy available under the law, the High Court would not exercise its extra- ordinary jurisdiction under Article 226 and that has been reiterated by holding that the litigants must first approach the Tribunals which act like courts of first instance in respect of the areas of law for which they have been constituted and therefore, it will not be open to the litigants to directly approach the High Court even where the question of vires of the statutory legislation is challenged.

In L. Chandra Kumar's case, the Court inter alia referred to and relied upon the case in Bidi Supply Co. v. Union of India [1956 SCR 267], wherein Bose, J. made the following observations:— "The heart and core of a democracy lies in the judicial process, and that means independent and fearless Judges free from executive control brought up in judicial traditions and trained to judicial ways of working and thinking. The main bulwarks of liberty and freedom lie there and it is clear to me that uncontrolled powers of discrimination in matters that seriously affect the lives and properties of people cannot be left to executive or quasi-executive bodies even if they exercise quasi- judicial

functions because they are then invested with an authority that even Parliament does not possess. Under the Constitution, Acts of Parliament are subject to judicial review particularly when they are said to infringe fundamental rights, therefore, if under the Constitution Parliament itself has not uncontrolled freedom of action, it is evident that it cannot invest lesser authorities with that power." The Court further referred to the following observations from the decision in Kesavananda Bharati v. State of Kerala [(1973) 4 SCC 225] as under:— "77. From their conclusions, many of which have been extracted by us in toto, it appears that this Court has always considered the power of judicial review vested in the High Courts and in this Court under Articles 226 and 32 respectively, enabling legislative action to be subjected to the scrutiny of superior courts, to be integral to our constitutional scheme." The Court further held:

"78. …… 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. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

81. If the power under Article 32 of the Constitution, which has been described as the "heart" and "soul" of the Constitution, can be additionally conferred upon "any other court", there is no reason why the same situation cannot subsist in respect of the jurisdiction conferred upon the High Courts under Article 226 of the Constitution. So long as the jurisdiction of the High Courts under Articles 226/227 and that of this Court under Article 32 is retained, there is no reason why the power to test the validity of legislations against the provisions of the Constitution cannot be conferred upon Administrative Tribunals created under the Act or upon Tribunals created under Article 323-B of the Constitution..." Thereafter, the Court to emphasise that Administrative Tribunals are not functioning properly, quoted the observations with regard to the functioning of the Administrative Tribunals from the Malimath Committee's Report (1989-90), which are reproduced hereunder:— "Functioning of Tribunals 8.63 Several tribunals are functioning in the country. Not all of them, however, have inspired confidence in the public mind. The reasons are not far to seek. The foremost is the lack of competence, objectivity and judicial approach. The next is their constitution, the power and method of appointment of personnel thereto, the inferior status and the casual method of working. The last is their actual composition; men of calibre are not willing to be appointed as presiding officers in view of the uncertainty of tenure, unsatisfactory conditions of service, executive subordination in matters of administration and political interference in judicial functioning. For these and other reasons, the quality of justice is stated to have suffered and the cause of expedition is not found to have been served by the establishment of such tribunals.

8.64 Even the experiment of setting up of the Administrative Tribunals under the Administrative Tribunals Act, 1985, has not been widely welcomed. Its members have been selected from all kinds of services including the Indian Police Service. The decision of the State Administrative Tribunals are not appealable except under Article 136 of the Constitution. On account of the heavy cost and remoteness of the forum, there is virtual negation of the right of appeal. This has led to denial of justice in many cases and consequential dissatisfaction.

There appears to be a move in some of the States where they have been established for their abolition." [It is to be stated that in Tamil Nadu, at present, the Administrative Tribunal is manned by only one man.] Finally the Court held thus:— "99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme court under Articles 226/227 and 32 of the Constitution, are unconstitutional.

Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution.

While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated." There cannot be any doubt that the aforesaid judgment of larger Bench is binding on this Court and we respectfully agree with the same. However, in a case like this, if thousands of employees are directed to approach the Administrative Tribunal, the Tribunal would not be in a position to render justice to the cause. Hence, as stated earlier because of very very exceptional circumstance that arose in the present case, there was no justifiable reason for the High Court not to entertain the petitions on the ground of alternative remedy provided under the statute.

Now coming to the question of right to strike — whether Fundamental, Statutory or Equitable/Moral Right — in our view, no such right exists with the government employees.

(A) There is no fundamental right to go on strike:-- Law on this subject is well settled and it has been repeatedly held by this Court that the employees have no fundamental right to resort to strike. In Kameshwar Prasad and others v. State of Bihar and another [(1962) Suppl. 3 SCR 369] this Court (C.B.) held that the rule in so far as it prohibited strikes was valid since there is no fundamental right to resort to strike.

In Radhey Shyam Sharma v. The Post Master General Central Circle, Nagpur [(1964) 7 SCR 403], the employees of Post and Telegraph Department of the Government went on strike from the midnight of July 11, 1960 throughout India and petitioner was on duty on that day. As he went on strike, in the departmental enquiry, penalty was imposed upon him. That was challenged before this Court. In that context, it was contended that Sections 3, 4 and 5 of the Essential Services Maintenance Ordinance No.1 of 1960 were violative of fundamental rights guaranteed by clauses (a) and (b) of Article 19(1) of the Constitution. The Court (C.B.) considered the Ordinance and held that Sections 3, 4 and 5 of the said Ordinance did not violate the fundamental rights enshrined in Article 19(1)(a) and (b) of the Constitution. The Court further held that a perusal of Article 19(1)(a) shows that there is no fundamental right to strike and all that the Ordinance provided was with respect to any illegal strike. For this purpose, the Court relied upon the earlier decision in All India Bank Employees' Association v. National Industrial Tribunal & others [(1962) 3 SCR 269] wherein the Court (C.B.) specifically held that even very liberal interpretation of sub-clause (C) of clause (1) of Article 19 cannot lead to the conclusion that trade unions have a guaranteed right to an effective collective bargaining or to strike, either as part of collective bargaining or otherwise.

In Ex-Capt. Harish Uppal v. Union of India and Another [(2003) 2 SCC 45], the Court (C.B.) held that lawyers have no right to go on strike or give a call for boycott and even they cannot go on a token strike. The Court has specifically observed that for just or unjust cause, strike cannot be justified in the present-day situation.

Take strike in any field, it can be easily realised that the weapon does more harm than any justice. Sufferer is the society — public at large.

In Communist Party of India (M) v. Bharat Kumar and others [(1998) 1 SCC 201], a three-Judge Bench of this Court approved the Full Bench decision of the Kerala High Court by holding thus:— "….There cannot be any doubt that the fundamental rights of the people as a whole cannot be subservient to the claim of fundamental right of an individual or only a section of the people. It is on the basis of this distinction that the High Court has rightly concluded that there cannot be any right to call or enforce a "Bandh" which interferes with the exercise of the fundamental freedoms of other citizens, in addition to causing national loss in many ways. We may also add that the reasoning given by the High Court particularly those in paragraphs 12, 13 and 17 for the ultimate conclusion and directions in paragraph 18 is correct with which we are in agreement." The relevant paragraph 17 of Kerala High Court judgment reads as under:— "17. No political party or organisation can claim that it is entitled to paralyse the industry and commerce in the entire State or nation and is entitled to prevent the citizens not in sympathy with its viewpoints, from exercising their fundamental rights or from performing their duties for their own benefit or for the benefit of the State or the nation. Such a claim would be unreasonable and could not be accepted as a legitimate exercise of a fundamental right by a political party or those comprising it." (B) There is no legal / statutory right to go on strike.

There is no statutory provision empowering the employees to go on strike.

Further, there is prohibition to go on strike under the Tamil Nadu Government Servants Conduct Rules, 1973 (hereinafter referred to as "the Conduct Rules"). Rule 22 provides that "no Government servant shall engage himself in strike or in incitements thereto or in similar activities." Explanation to the said provision explains the term 'similar activities'. It states that "for the purpose of this rule the expression 'similar activities' shall be deemed to include the absence from work or neglect of duties without permission and with the object of compelling something to be done by his superior officers or the Government or any demonstrative fast usually called "hunger strike" for similar purposes. Rule 22-A provides that "no Government servant shall conduct any procession or hold or address any meeting in any part of any open ground adjoining any Government Office or inside any Office premises — (a) during office hours on any working day;

and (b) outside office hours or on holidays, save with the prior permission of the head of the Department or head of office, as the case may be.

(C) There is no moral or equitable justification to go on strike.

Apart from statutory rights, Government employees cannot claim that they can take the society at ransom by going on strike.

Even if there is injustice to some extent, as presumed by such employees, in a democratic welfare State, they have to resort to the machinery provided under different statutory provisions for redressal of their grievances. Strike as a weapon is mostly misused which results in chaos and total maladministration. Strike affects the society as a whole and particularly when two lakh employees go on strike enmasse, the entire administration comes to a grinding halt. In the case of strike by a teacher, entire educational system suffers; many students are prevented from appearing in their exams which ultimately affect their whole career. In case of strike by Doctors, innocent patients suffer; in case of strike by employees of transport services, entire movement of the society comes to a stand still; business is adversely affected and number of persons find it difficult to attend to their work, to move from one place to another or one city to another.

On occasions, public properties are destroyed or damaged and finally this creates bitterness among public against those who are on strike.

Further, Mr. K.K. Venugopal, learned senior counsel appearing for the State of Tamil Nadu also submitted that there are about 12 lacs Government employees in the State. Out of the total income from direct tax, approximately 90% of the amount is spent on the salary of the employees.

Therefore, he rightly submits that in a Society where there is a large scale unemployment and number of qualified persons are eagerly waiting for employment in Government Departments or in public sector undertakings, strikes cannot be justified on any equitable ground.

We agree with the said submission. In the prevailing situation, apart from being conscious of rights, we have to be fully aware of our duties, responsibilities and effective methods for discharging the same. For redressing their grievances, instead of going on strike, if employees do some more work honestly, diligently and efficiently, such gesture would not only be appreciated by the authority but also by people at large. The reason being, in a democracy even though they are Government employees, they are part and parcel of governing body and owe duty to the Society.

We also agree that misconduct by the government employees is required to be dealt with in accordance with law. However, considering the gravity of the situation and the fact that on occasion, even if the employees are not prepared to agree with what is contended by some leaders who encourage the strikes, they are forced to go on strikes for reasons beyond their control. Therefore, even though the provisions of the Act and the Rules are to be enforced, they are to be enforced after taking into consideration the situation and the capacity of the employees to resist. On occasion, there is tendency or compulsion to blindly follow the others. In this view of the matter, we had suggested to the learned senior counsel Mr. Venugopal that employees who went on strike may be reinstated in service and that suggestion was accepted by Mr. Venugopal after obtaining instructions from the State Government. Hence, on 24.7.2003, we had passed the following order:— "Heard the learned counsel for the parties.

Mr. K.K. Venugopal, the learned senior counsel appearing for the State of Tamil Nadu after obtaining necessary instructions states that:

1. The State Government will re-instate all the government employees who are dismissed because they had gone on strike, except (i) 2,200 employees who had been arrested and (ii) employees against whom FIR had been lodged.

2. This reinstatement in service would be subject to unconditional apology as well as undertaking to the effect that employees would abide by Rule 22 of the Tamil Nadu Government Servants Conduct Rules 1973 which provides as under: - "22. Strikes: No Government servant shall engage himself in strike or in incitements thereto or in similar activities." Explanation — For the purpose of this rule the expression 'similar activities' shall be deemed to include the absence from work or neglect of duties without permission and with the object of compelling something to be done by his superior officers or the Government or any demonstrative fast usually called "hunger strike" for similar purposes." It is also stated that Government will proceed under the Disciplinary Rules only against those employees who had indulged in violence and who had incited the other employees to go on strike.

From 25th July such employees would be reinstated in service subject to their giving unconditional apology for resorting to strike and also an undertaking to the effect that in future he would abide by Rule 22.

He also states that for the employees who would be reinstated in service with regard to the period for which they remained absent, appropriate order would be passed by the State Government for regularizing their absent. However, this would not be treated as a break in service.

Ordered accordingly.

For further orders and directions list the matter on 31.7.2003." On 31st, number of affidavits were filed contending that large number of employees are not reinstated in service despite the assurance given by the State Government. Matter was adjourned at the request of learned counsel for the respondent for verification of the said contention. After verification, additional affidavit has been filed by Secretary to Government, Personnel and Administrative Reforms Department, Secretariat, Chennai, revealing the exact figures with regard to dismissed and reinstated employees. In paragraph 6, it has been stated as under:— "6. The following details are submitted for reference of this Hon'ble Court:—

1. Total number of Government servants 1,70,241 dismissed as per Section 7 of TESMA and teachers of Aided Colleges suspended.

2. Total number reinstated so far, as per the 1,56,106 statement made before this Hon'ble Court.

3. Number of employees and teachers not 14,135 reinstated.

CATEGORIES OF EMPLOYEES AND GOVERNMENT TEACHERS WHO CANNOT CLAIM A RIGHT TO BE REINSTATED.

(a) Government servants arrested. 2,211 (b) Secretariat staff for the reasons mentioned 2,215 earlier.

(c) Officers holding higher position. 534 (d) Government servants (other than the 1,112 Secretariat staff) involved in offences Under Section 5 or Section 5 read with Section 4 of TESMA.

Total number of persons who cannot 6,072 Claim a right to be reinstated.

REMAINING NUMBER OF EMPLOYEES 8,063 WHOM THE STATE GOVERNMENT IS WILLING TO REINSTATE." For the categories (b) and (c) i.e. Secretarial staff of 2215 and 534 officers holding higher positions, it is agreed and made clear that they would be treated as suspended instead of dismissed. Remaining 8063 employees, as stated above, will be reinstated in service (w.e.f. 25th July, 2003) on their tendering unconditional apology for resorting to strike and also an undertaking to abide by Rule 22 of Conduct Rules in future. He further makes a statement that with regard to the representations which are made or are to be made by the employees who are in category (a), (b), (c) and (d), the same would be considered by three retired High Court Judges to be named by the Chief Justice of the High Court of Madras. Each Judge would decide approximately representations of 2000 employees within a period of one month or thereabout from the date of allocation of representations. For this purpose, a convenient place for their office work and the secretarial staff would be made available to all the three Judges by the State Government within a period of seven days from today without fail.

The concerned Judges would decide the representation of the employees without taking into consideration Section 7 of the Ordinance and as far as possible in accordance with the Conduct Rules and equity. Retired Judges to be paid honorarium at the rate of Rs.50000/- per month. All the three Judges are requested to evolve a common procedure for disposing of the representations. The decision of the Judge on the representation would be binding to the State Government and the State Government would act in accordance with the same. However, if any of the employees is aggrieved, it would be open to such employee to challenge the same before an appropriate forum.

Finally, it is made clear that employees who are re-instated in service would take care in future in maintaining discipline as there is no question of having any fundamental, legal or equitable right to go on strike. The employees have to adopt other alternative methods for redressal of their grievances. For those employees who are not re- instated in service on the ground that FIRs are lodged against them or after holding any departmental enquiry penalty is imposed, it would be open to them to challenge the same before the Administrative Tribunal and the Tribunal would pass appropriate order including interim order within a period of two weeks from the date of filing of such application before it. It is unfortunate that the concerned authorities are not making the Administrative Tribunals under the Administrative Tribunal Act, 1985, functional and effective by appointing men of caliber. It is for the High Court to see that if the Administrative Tribunals are not functioning, justice should not be denied to the affected persons. In case, if the Administrative Tribunal is not functioning, it would be open to the employees to approach the High Court.

Lastly, we make it clear that we have not at all dealt with and considered the constitutional validity of Tamil Nadu Essential Services Maintenance Act, 2002 and the Tamil Nadu Ordinance No.3 of 2003 or interpretation of any of the provisions thereof, as the State Government has gracefully agreed to re-instate most of the employees who had gone on strike. For this, we appreciate the efforts made and the reasonable stand taken by the learned Counsel for the parties.

Further, we have not dealt with the grievances of the employees against various orders issued by the State Government affecting their service benefits. We hope that Government would try to consider the same appropriately.

The Appeals and Writ Petitions are disposed of accordingly.

There shall be no order as to costs.