SUPREME COURT OF INDIA

State of West Bengal

Vs

Ashish Kumar Roy

Appeal (Civil). 4454 of 1999

(Shivraj V.Patil and B. N. Srikrishna)

03/12/2004

JUDGMENT

B. N. SRIKRISHNA, J.

This appeal by special leave impugns a judgment of the Division Bench of the Calcutta High Court allowing a writ petition under Article 226 of the Constitution of India, holding certain provisions of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 (hereinafter referred to as 'the Act') as ultra vires the Constitution of India as also declaring that clause 3(e) of Article 323B of the Constitution to the extent it provides for transfer of all pending cases under Article 323 B violates the basic structure of the Constitution. The judgment also declares section 9 of the said Act as ultra vires the Constitution and violative of the basic structure of the Constitution.

The Government of West Bengal, after obtaining the assent of the Governor, notified and published the provisions of the said Act in the official gazette dated December 12, 1997.

The respondents 1 to 4, who are advocates and members of the Bar Association of Calcutta High Court, filed writ petition no. 7110(W)/ 1998 in the Calcutta High Court challenging the provisions of the said Act as ultra vires, null and void and ineffective, and seeking a declaration that Article 323B (2)(d) of the Constitution could not take away the power of the High Court and other civil courts to decide disputes in relation to the acts specified in the said Act.

The Act was brought into force by a Notification dated 3rd August 1998. Simultaneously, a Tribunal called the West Bengal Land Reforms and Tenancy Tribunal, contemplated under section 4 of the Act, was also brought into existence by another notification issued on the same date. Another notification was issued on the same date specifying the place at which the Benches of the said Tribunal shall ordinarily sit. It was also notified on the same day that w.e.f.12th August 1998 (the appointed date) the tribunal shall exercise jurisdiction, power and authority in relation to the matters specified in clauses (a) to (e) of section 6 of the said Act. The learned single Judge of the Calcutta High Court heard the writ petition and by the impugned judgment dated 16.4.1999 struck down certain provisions of the said Act as already indicated. The State of West Bengal is in appeal.

Three principal contentions were urged before the High Court, namely:

1. The Tribunal constituted under the said Act is not a Tribunal within the meaning of Article 323B (1)(d) of the Constitution of India as it lacks the necessary attributes prescribed by the said Article.

2. The jurisdiction power and authority of the Tribunal specified in Sections 5, 6, 7 and 8 of the said Act are ultra vires the Constitution of India, as the said provisions abridge and take away the power of judicial review of the High Court under Article 226 and 227 of the Constitution of India, as a court of first instance;

3. The provision of the said Act, by which all pending matters, proceedings, cases and appeals before the High Court stood transferred to the Tribunal under section 9, is also ultra vires the Constitution as it abridges and takes away the jurisdiction and powers of the High Court under Articles 226 and 227 of the Constitution of India and consequently violates the basic structure of the Constitution.

The learned single Judge of the High Court negatived the first contention and held that the said Act was enacted for resolution of disputes relating to and arising out of certain acts specified therein for which purpose the Tribunal could be validly constituted under Article 323 B of the Constitution of India. The learned single Judge also held that Constitution of the Tribunal under the said Act in relation to the specified enactments was not ultra vires Article 323B (2) (d) of the Constitution. However, the learned single Judge accepted the second and third contentions by taking the view that the observations made by Constitution Bench of this Court in L. Chandra Kumar v. Union of India and ors. 6 did not amount to 'law declared' within the meaning of Article 141 of the Constitution of India, and therefore, was not binding on the High Court. Having examined it independently, he concluded that the impugned provisions of the said Act were violative of the Constitution including the basic structure thereof and struck them down.

The learned counsel for the appellant contends that the High Court erred in accepting the second and third contentions urged by the writ petitioners. He submits that a careful reading of the observations and directions in paragraph 99 of the Constitution Bench judgment in L Chandra Kumar (supra) makes it clear that they were 'law declared' within the meaning of Article 141. This law was binding

on the learned single Judge and he could not have taken a contrary view in the matter, submits the learned counsel.

The learned counsel for the respondents reiterated the contentions urged before the High Court and supported the view of the High Court on the second and third contentions . In addition, the learned counsel for the respondents also urged that the finding of the single Judge of the High Court as to the nature of the Tribunal was erroneous and urged that we should hold that the Tribunal constituted under the Act is not a Tribunal within the meaning of Article 323 B (2)(d) of the Constitution of India.

The Act

The object of the enactment is indicated in the preamble as under:

*"Whereas it is expedient to provide for the setting up of a Land Reforms and Tenancy Tribunal and for adjudication and trial by such Tribunal of disputes, claims, objections and applications relating to, or arising out of, land reforms or tenancy in land and other matters under a specified Act and for the exclusion of the jurisdiction of all courts except a Division Bench of the High Court exercising writ jurisdiction under Articles 226 and 227 of the Constitution of India and the Supreme Court of India in adjudication and trial of such disputes, claims, objections and applications and for matters connected therewith or incidental thereto." **

Under chapter 2 a tribunal called the West Bengal Land Reforms and Tenancy Tribunal is established. Section 6 therein provides that "Subject to the other provisions of this Act, the Tribunal shall, with effect from such date as may be appointed by the State Government by notification in this behalf, exercise jurisdiction, power and authority in relation to

(a) An order in original made by an Authority under a specified Act;

(b) An application complaining in action or culpable negligence of an Authority under a specified Act;

(c) An appeal against an order or the Mines Tribunal appointed under section 36 of the West Bengal Estates Acquisition Act, 1953;

(d) Adjudication of disputes and applications relating to matters under any provision of a specified Act involving interpretation of any provision of the Constitution or of validity of a specified Act or of any other law for the time being in force;

(e) Adjudication of maters, proceedings, cases and appeals which stand transferred from the High

Court and other Authorities to the Tribunal in accordance with the provisions of this Act."Section 7 provides that from the date appointed by the State Government under section 6, the Tribunal shall exercise all the jurisdiction, power and authority exercisable immediately before that day by any court including the High Court, except the writ jurisdiction under articles 226 and 227 of the Constitution exercised by a Division Bench of the High Court, but excluding the Supreme Court, for adjudication or trial of disputes and applications relating to land reforms and matters connected therewith or incidental thereto and other matters arising out of any provision of a specified Act.

Section 8 bars the jurisdiction of the High Court except where that Court exercises writ jurisdiction under articles 226 and 227 of the Constitution by a Division Bench, or any civil court, except the Supreme Court, to entertain any proceeding or application or exercise any jurisdiction, power or authority in relation to adjudication or trial of disputes or applications relating to land reforms or any matter connected therewith or incidental thereto or any other matter under any provision of a specified Act.

Section 9 makes provision for transfer of all matters pending before the High Court except matters pending in the writ jurisdiction before the Division Bench under Articles 226 and 227, or any other Court, to the Tribunal for disposal in accordance with the provisions of the Act, if they are matters, proceedings, cases and appeals relating to land reforms and matters connected therewith or incidental thereto and other matters arising out of a specified Act.

The Tribunal is also given appellate powers over the orders passed by an authority or functionary under a specified Act. Section 11 of the Act bars an appeal or application against any decision of the Tribunal in a proceeding in any Court except the Supreme Court and the Division Bench of the High Court exercising writ jurisdiction under Articles 226 and 227 of the Constitution.

There are certain other incidental and consequential sections which are not necessary to be noticed in detail. Section 2(h) defines the terms 'estate' as the holding of land of any description or classification of a raiyat or intermediary or other person under a specified Act. Section (2) (r) defines the term 'specified Act' to mean (i) the West Bengal Estates Acquisition Act, 1953; or (ii) the West Bengal Land Reforms Act, 1955; or (iii) the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981; or (iv) the West Bengal Acquisition of Homestead Land for Agricultural Labourers, Artisans and Fishermen Act, 1975; or (v) the West Bengal Land Holding Revenue Act, 1979.Legal Contentions .

We may conveniently club contentions 2 and 3 urged before us as to the constitutional validity of the provisions of the Act. Learned counsel for the appellant urges that the direction given by this Court in L.Chandra Kumar (supra) is 'law declared' so as to make it binding under Article 141 of the Constitution. The learned single Judge observed on this issue:

"I have refrained myself from making any comment and deciding as no ground has been taken in the petition, further while testing a legislative action on the anvil of constitutional provision, legal implication of the above decision of the Supreme Court shall not be ascertained in this action. So, I

have left it open". Nonetheless, the learned single Judge proceeded to hold :

"In my opinion, ratio and/or issue which has been decided in the aforesaid judgment is whether the power under Articles 226 & 227 of the High Court can be ousted by enacting a legislation in exercise of power under Articles 323 A & B. It has been decided answering the above issue that the power of the High Court under Articles 226 & 227 is inviolable provision and the same being the par of the basic structure of the Constitution. The legislature is not competent to take away such authority. In paragraphs 90 & 99 it has been made amply clear.

Therefore, I hold the ratio decided in the aforesaid judgment of the Supreme Court in L.Chandrakumar's case in answer to the issues and/or questions to the question No. 1 that the power of the High Court under Articles 226 and 227 cannot be ousted by enacting any legislation under Articles 323 A & B and this decision is declared law under Article 141 of Constitution. In other words, if any provision made in this kind of legislation to oust the jurisdiction under Articles 226 & 227 runs counter to the power of judicial review conferred on the High Courts under Articles 226 & 227 and on the Supreme Court under Article 32 of the Constitution as court of first instance." *

Having thus observed, the learned Judge came to the conclusion that the provisions of the Act were violative of the basic structure of the Constitution and struck down the provisions of Sections 6, 7 and 8 of the Act.

In our considered view, the learned Judge was not right in disposing of the observations in L.Chandra Kumar (supra) by side-stepping them. The issues considered by the Constitution Bench of this Court in L.Chandra Kumar (supra) have been formulated (vide para 1) and they are as under:

(1) Whether the power conferred upon Parliament or the State Legislatures, as the case may be, by sub- clause (d) of clause (2) of Article 323-A or by sub- clause (d) of clause (3) of Article 323-B of the Constitution, to totally exclude the jurisdiction of 'all courts', except that of the Supreme Court under Article 136, in respect of disputes and complaints referred to in clause (1) of Article 323-A or with regard to all or any of the matters specified in clause (2) of Article 323-B, runs counter to the power of judicial review conferred on the High Courts under Articles 226/227 and on the Supreme Court under Article 32 of the Constitution?

(2) Whether the Tribunals, constituted either under Article 323-A or under Article 323-B of the Constitution, possess the competence to test the constitutional validity of a statutory provision/rule?

(3) Whether these Tribunals, as they are functioning at present, can be said to be effective substitutes for the High Courts in discharging the power of judicial review? If not, what are the changes required to make them conform to their founding objectives?"After an elaborate discussion of the contentions urged before it, and careful appraisal of the law laid down in several judgments, and noticing the critical comments made with regard to the functioning of the Tribunals set up under

Articles 323A and 323B of the Constitution by the Law Commission of India and the Malimath Committee, finally this Court observed thus in paragraphs 98 and 99 of the Judgment:

"98. Since we have analysed the issue of the constitutional validity of Section 5(6) of the Act at length, we may now pronounce our opinion on this aspect. Though the vires of the provision was not in question in Dr. Mahabal Ram case , we believe that the approach adopted in that case, the relevant portion of which has been extracted in the first part of this judgment, is correct since it harmoniously resolves the manner in which Sections 5(2) and 5(6) can operate together. We wish to make it clear that where a question involving the interpretation of a statutory provision or rule in relation to the Constitution arises for the consideration of a Single Member Bench of the Administrative Tribunal, the proviso to Section 5(6) will automatically apply and the Chairman or the Member concerned shall refer the matter to a Bench consisting of at least two Members, one of whom must be a Judicial Member.

This will ensure that questions involving the virus of a statutory provision or rule will never arise for adjudication before a Single Member Bench or a Bench which does not consist of a Judicial Member. So construed, Section 5(6) will no longer be susceptible to charges of unconstitutionality.

99.In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) or 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." **

In our view, the opinion pronounced in para 98 and the directions given in para 99 clearly amount to 'law declared' within the meaning of Article 141 of the Constitution of India.

It was not open to the learned single Judge of the High Court to take any view inconsistent with or deviating from the law thus laid down. Hence, in our judgment, the findings made and the directions given by the learned single Judge on contentions 2 and 3 must straightaway be set aside as inconsistent with the law laid down by this Court which was binding on the High Court.

The learned counsel for the respondents, however, faintly urged that L.Chandra Kumar (supra) itself holds that the legislature has no power to exclude the powers of the High Court under Articles 226 and 227 and the directions given in para 98 and 99 were merely reiteration of the principle of exhaustion of other remedies. We are unable to accede to this contention.

After analyzing the constitutional provisions, the Constitutional Bench of this Court pointed out that Article 323A and clause 3(d) of Article 323B, to the extent they exclude totally the jurisdiction of the High Court and Supreme Court under Articles 226 and 227 and 32 of the Constitution were unconstitutional. The constitutionality of the said provisions was saved by the well known process of reading down the provisions.

This Court held that while the jurisdiction of the High Court under Article 226/227, and that of the Supreme Court under Article 32, could not be totally excluded, it was yet constitutionally permissible for other Courts and Tribunals to perform a supplementary role in discharging the powers conferred on the High Court and the Supreme Court by Articles 226/227 and 32 of the Constitution, respectively. Hence, it was held that as long as Tribunals constituted perform a supplementary role, without exclusion of the jurisdiction of High Court Articles 226 and 227 and of the Supreme Court, 32 of the Constitution, the validity of the legislation constituting such Tribunals could not be doubted. # It was in these circumstances that a direction was given that the Tribunals would act as authorities of the first instance, whose decisions could be challenged before the Division Bench of the High Court in its writ jurisdiction.

Thus the Constitution Bench of this Court upheld section 56 of the Administrative Tribunal Act, 1985 as valid and constitutional, interpreted in the manner indicated in its judgment. We are, therefore, unable to accept the contention of the learned counsel for the respondent for we are of the view that the matter is no longer res integra.

We may now turn to the first contention which was urged before the High Court, which failed to impress the High Court. The learned counsel for the respondents relied on a judgment of this Court in Jamshed Hormusji Wadia vs. Board of Trustees, Port of Mumbai and another nd urged that it is open to the respondent to canvas that the finding of the single Judge of the High Court on the issue as to the nature of the tribunal was erroneous and should be reversed, though there was no appeal or cross objection filed. We shall assume that the respondents have such a right to canvas the correctness of the finding of the single Judge of the High Court on this issue and shall proceed to examine the contention on its merits.

It is contended that the Tribunal constituted under the impugned Act is not a tribunal within the meaning of Article 323B (2)(d), at the highest, it may be an ordinary tribunal. Hence, the legislation

constituting such a ordinary tribunal could not oust the writ jurisdiction of the High Court as it did not fall within the protective umbrella of Article 323B of the constitution.

Article 323 B reads as under:

"323B. Tribunals for other matters (1) The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters specified in clause (2) with respect to which such Legislature has power to make laws.

(2) The matters referred to in clause (1) are the following, namely:-.....

(d) land reforms by way of acquisition by the State of any estate as defined in article 31A or of any rights therein or the extinguishment or modification of any such rights or by way of ceiling on agricultural land or in any other way;" *

Clause (3) provides that a law made under clause (1), inter alia, may exclude the jurisdiction of all courts except the jurisdiction of the Supreme Court under Article 136 with respect to all or any other matter falling within the jurisdiction of the said tribunal.

The view which was propounded in L. Sampat Kumar (supra), and reiterated subject to qualification in Chandra Kumar (supra), is that a validly constituted tribunal under Article 323B could take away some of the jurisdiction of the High Courts.

In the instant case, the Tribunal has been constituted under the West Bengal Tenancy Tribunal Act and it has been given the jurisdiction to entertain disputes with regard to the five specified acts. Learned counsel for the respondents argues thus: the tribunal contemplated under Article 323B clause (1) read with clause (2) (d) can only be a tribunal for deciding disputes or matters with respect to land reforms by way of acquisition of any estate as defined in Article 31A. Article 31A itself defines the expression 'estate' in clause (2). Both Article 31A and the definition of 'estate' in clause (2) of Article 31A have received judicial interpretation by Constitutional Benches of this Court which have uniformally taken the view that the protection of Article 31A is available only to laws which are intended to carry out agrarian reforms.

The predominant purpose of sub-clause (d) of clause (2) of Article 323B is to constitute a tribunal only with respect to disputes pertaining to laws carrying out agrarian reforms. Out of the 5 specified Acts, the West Bengal Land Reforms Act, 1955, the Calcutta Thika Tenancy (Acquisition and Regulation) Act, 1981 and the West Bengal Land Holding Revenue Act, 1979 have no connection whatsoever with agrarian reforms. Therefore, the Tribunal constituted to deal with these Acts cannot be a tribunal within the meaning of Article 323B(2)(d) of the Constitution. Hence, the learned counsel contends that the impugned Act is not immune from challenge on the ground of violation of the Constitutional provisions.

The argument is unacceptable for three reasons. **The first is the fallacious assumption that in order to be a valid tribunal constituted under Article 323B(1) and 323B(2)(d), the tribunal must necessarily deal with laws for agrarian reforms. In our view, the reading of the expression 'estate' from clause (2) of Article 31A into Article 323B (2)(d) is only for the purpose of enumeration. Instead of repeating the entire definition contained in clause (2) of Article 31A in sub-clause(d) of 323B, the framers of the Constitution merely indicated that the word 'estate' would have the same meaning as in Article 31A. The reference to the definition of 'estate' in Article 31A made in Article 323B (2) (d) serves no other purpose. #**

Secondly, the concept of 'agrarian reform' is not confined only to agriculture or its reform. In the words of Krishna Iyer, J. in his concur judgment in State of Kerala and another vs. The Gwalior Rayon Silk Mfg (Wvg.) Co. Ltd. Etc.) (para 30):

"30. The concept of agrarian reform is a complex and dynamic one promoting wider interests than conventional reorganization of the land system or distribution of land. It is intended to realize the social function of the land and includes "we are merely giving, by way of illustration, a few familiar proposals of agrarian reform" creation of economic units of rural production, establishment of adequate credit system, implementation of modern production techniques, construction of irrigation systems and adequate drainage, making available fertilizers, fungicides, herbicides and other methods of intensifying and increasing agricultural production, providing readily available means of communication and transportation, to facilitate proper marketing of the village produce, putting up of silos, warehouses etc. to the extent necessary for preserving produce and handling it so as to bring it conveniently within the reach of the consumers when they need it, training of village youth in modern agricultural practices with a view to maximizing production and help solve social problems that are found in relation to the life of the agricultural community.

The village man, his welfare, is the target."Further, in testing as to whether the law was intended for agrarian reform, the Court is required to look to the substance of the act and not its mere outward form.

*Thirdly, the contention also proceeds on a misreading of Article 323B (2)(d). Under clause (1) the State Legislature is empowered to make a law with regard to entry 18 in List II of the 7th Schedule which reads "Land, that is to say, right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans, colonization". Sub-clause (d) of Article 323 B is not confined to land reforms by acquisitions of estates or extinguishment or modification of any such rights for the clause ends with the phrase "or in any other way", which are wide enough to accommodate any other type of law which is intended for "land reforms". **

We are, therefore, unable to accept the contention of the learned counsel that in order to fall within the protection of umbrella of Article 323B, the tribunal must have been constituted only with regard to disputes arising under any law intended for agrarian reform. As long as it is a law with respect to "land reforms", it is sufficient to fall within the ambit of sub- clause

(d) of clause (2) of Article 323B of the Constitution. #

"Agrarian reforms", itself is a wide concept and we do not see why the objects attempted to be fulfilled by the specified Acts would not fall within the ambit of this compendious term. Looking at the preambles and the schemes of the five specified Acts, we are unable to find fault with the reasoning of the learned single Judge that the tribunal constituted to deal with the disputes arising under the said specified Acts was very much a tribunal within the meaning of Article 323B of the Constitution.

We, therefore, accept the reasoning of the learned single Judge and hold that the learned single Judge was justified in rejecting the contention that the tribunal constituted under the impugned Act was not a tribunal within the meaning of Article 323B of the Constitution. # There is no merit in the contention.

In the result, the appeal is allowed and the impugned judgment of the High Court is set aside.

However, in the circumstances of the case, there shall be no order as to costs.