

SUPREME COURT OF INDIA

Amrik Singh Lyallpuri

Vs.

Union of India & Ors.

C.A.No.5075 of 2005

(G.S.Singhvi and Asok Kumar Ganguly,JJ.,)

21.04.2011

JUDGMENT

Asok Kumar Ganguly,J.,

1. The principal question raised in this appeal is the constitutional validity of Section 347D of Delhi Municipal Corporation Act, 1957 (hereinafter referred to as, 'the said Act'). Similar provisions are also there in Section 256 of New Delhi Municipal Council Act, 1994 (hereinafter referred to as, 'the NDMC Act').

2. The question was raised in a writ petition filed by the appellant who is a journalist by profession and the editor of Urdu Weekly called 'Lalkar'. In the petition it has been urged that one Shri B.S. Mathur, Additional District and Sessions Judge was appointed the Presiding Officer of the MCD/NDMC Appellate Tribunal in terms of sub-sections (1) and (2) of Section 347 of the said Act. His appointment was made for deciding appeals preferred under Section 343 or Section 347B of the said Act. Shri B.S. Mathur was appointed in Appellate Tribunal to hear and dispose of all appeals from the order passed by the Zonal Engineer (Buildings) of the respective zones of Municipal Corporation of Delhi and that of New Delhi Municipal Council. However, the grievance of the appellant is that orders of the Appellate Tribunal are appealable before the Administrator of Delhi i.e. Lt. Governor under Section 347D of the said Act. The main grievance in the public interest litigation is when an appeal is decided by an Appellate Authority which is manned by a Judge of the Civil Court, appeal from the decision of such authority cannot be heard and by an executive authority, however high such executive authority may be.

3. In order to appreciate this controversy it is necessary to consider the relevant statutory provisions. The provision for constitution of an Appellate Tribunal under Section 347A of the said Act are as follows:-

"347A. Appellate Tribunal . - (1) The Central Government shall, by notification in the Official Gazette, constitute one or more Appellate Tribunals

with headquarters at Delhi, for deciding appeals preferred under section 343 or section 347B.

(2) An Appellate Tribunal shall consist of one person to be appointed by the Central Government on such terms and conditions of service as may be prescribed by rules.

(3) A person shall not be qualified for appointment as the presiding officer of an Appellate Tribunal unless he is, or has been, a district judge or an additional district judge or has, for at least ten years, held a judicial office in India.

(4) The Central Government may, if it so thinks fit, appoint one or more persons having special knowledge of, or experience in, the matters involved in such appeals, to act as assessors to advise the Appellate Tribunal in the proceedings before it, but no advice of the assessors shall be binding on the Appellate Tribunal.

(5) The Central Government shall, by notification in the Official Gazette, define the territorial limits within which an Appellate Tribunal shall exercise its jurisdiction, and where different Appellate Tribunals have jurisdiction over the same territorial limits, the Central Government shall also provide for the distribution and allocation of work to be performed by such Tribunals.

(6) For the purpose of enabling it to discharge its functions under this Act, every Appellate Tribunal shall have a Registrar and such other staff on such terms and conditions of service as may be prescribed by rules :

Provided that the Registrar and staff may be employed jointly for all or any number of such Tribunals in accordance with the rules."

4. For the purpose of deciding the controversy of this case, the provisions of Sections 343 and 347B are not relevant, but Section 347C which provides for the procedure before such Appellate Tribunal is relevant. Particularly, the provision of 347C sub-section (7) which is relevant for the purpose of deciding the controversy is set out below:-

"Section 347C - Procedure of the
Appellate Tribunal -

xxx xxx xxx

(7) Every Appellate Tribunal, shall, in addition to the powers conferred on it under this Act, have the same powers as are vested in a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely:--

(a) summoning and enforcing the attendance of persons and examining them on oath;

- (b) requiring the discovery and inspection of documents;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copies thereof from any court or office;
- (e) issuing commissions for the examination of witnesses or documents; and
- (f) any other matter which may be prescribed by rules, and every proceeding of an Appellate Tribunal in hearing or deciding an appeal or in connection with execution of its order, shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196, of the Indian Penal Code (45 of 1860), and every Appellate Tribunal shall be deemed to be a Civil Court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973, (2 of 1974)."

5. From a perusal of the provisions of Section 347A and 347C, sub-clause (7), it is clear that the said tribunal shall be manned by a person who is or has been a District Judge or an Additional District Judge or has, for at least ten years, held a judicial office in India [Section 347A, sub-clause (3)]. Insofar as Section 347C is concerned, it is very clear that such tribunal shall have in certain matters, the trappings of a Civil Court trying a suit under the Civil Procedure Code. Clause (f) of sub-section (7) of Section 347 further provides that proceedings before such tribunal shall be judicial proceedings within the meaning of Section 193 and Section 228 for the purpose of Section 196 of the Indian Penal Code and every Appellate Tribunal shall be deemed to be a Civil Court for the purpose of Section 195 and Chapter XXVI of the Code of Criminal Procedure.

6. The provisions of Section 253 of the NDMC Act are virtually on the same lines. Under sub-section (3) of Section 347A and sub-section (3) of Section 253 of the NDMC Act, a person shall not be qualified for appointment as a presiding officer of an Appellate Tribunal unless he is, or has been, a District Judge or an Additional District Judge or has, for at least ten years, held a judicial office. Similarly, Section 355 of the NDMC Act virtually is *pari materia* with sub-section (7) of Section 347C of the said Act. Therefore, on a reading of the aforesaid two provisions it is clear that the Appellate Tribunals created under the aforesaid statutes are quasi judicial bodies with the trappings of the Civil Court and that they are manned by judicial officers of considerable experience. In discharging their functions, such bodies are acting as a Civil Court in respect of some of its functions, and the proceedings before such bodies are judicial proceedings.

7. However, an appeal is provided against the order of such Appellate Tribunals under both the statutes.

8. Under Section 347D of the said Act, such appeal shall lie to the Administrator. The relevant provision is set out below:-

"Section 347D - Appeal against orders of Appellate Tribunal - (1) An appeal shall lie to the Administrator against an order of the Appellate Tribunal, made in an appeal under section 343 or section 347B, confirming, modifying or annulling an order made or notice issued under this Act.

(2) The provisions of sub-sections (2) and (3) of section 347B and section 347C and the rules made thereunder, shall, so far as may be, apply to the filing and disposal of an appeal under this section as they apply to the filing and disposal of an appeal under those sections.

(3) An order of the Administrator on an appeal under this section, and subject only to such order, an order of the Appellate Tribunal under section 347B, and subject to such orders of the Administrator or an Appellate Tribunal, an order or notice referred to in sub-section (1) of that section, shall be final."

9. Similarly, under Section 256 of the NDMC Act, appeal also lies to the Administrator. Both the sections, namely, Section 347D of the said Act and Section 256 of the NDMC Act are couched in similar terms. Under both the Acts, the jurisdiction of the Civil Court has been barred; vide Section 347E of the said Act and Section 257 of the NDMC Act.

10. The main question which was raised in the writ petition moved before the High Court was whether an appeal from an order of the Appellate Tribunal constituted under the aforesaid two Acts can be heard and decided by the Administrator. The term "Administrator" has been defined under Section 2(1) of the said Act as follows:-

"Section 2 - Definitions.- In this Act, unless the context otherwise requires,--

(1) "Administrator" means the Lieutenant Governor of the National Capital Territory of Delhi;"

11. Under Section 2(1) of the NDMC Act, the term "Administrator" has been defined as follows:-

"Section 2 - Definitions.- In this Act, unless the context otherwise requires, (1)"Administrator" means the Administrator of the National Capital Territory of Delhi;"

12. On a comparison of the aforesaid definitions, it is clear that there is not much difference in the aforesaid two definitions and by Administrator is meant "Lieutenant Governor of the National Capital Territory of Delhi".

13. Mr. Harish Salve, learned senior counsel, who on the request of the Court appeared as an Amicus Curie in this matter, contended that the aforesaid provision of hearing of the appeal by the Administrator from an order of the Appellate Tribunal is violative of the concept of

judicial review which is enshrined in our Constitution. The learned counsel submitted that the order of the Appellate Tribunal is certainly a quasi judicial one being passed by Judicial Authority which has the trappings of the Court and the appeal from such an order cannot lie to any authority except a judicial authority.

14. Under our constitutional scheme it was contended, an executive authority cannot entertain an appeal from an order passed by the judicial authority even though such judicial authority is acting in a quasi-judicial capacity. In support of this contention, reliance was placed on the judgment of this Court in the case of *P. Sambamurthy and others v. State of Andhra Pradesh and another*, (1987) 1 SCC 362, wherein a Constitution Bench of this Court speaking through Chief Justice Bhagwati examined the constitutional validity of Article 371D (5) of the Constitution, inserted by 32nd Constitution Amendment Act, 1973. In *P. Sambamurthy (supra)*, this Court was called upon to decide an issue similar to the one at hand. Clause (3) of Article 371-D provided for the creation of an administrative tribunal for the State of Andhra Pradesh so as to exercise jurisdiction with respect to the matters mentioned in sub clauses (a), (b) and (c). Clause (5) however, subjected the decision of the said administrative tribunal to the confirmation of the State Government. The Court held it as violative of the principle of 'rule of law', insofar it placed the power of reviewing the decision of a quasi judicial tribunal in the hands of the executive which according to this Court, contravened the principle of judicial review. This Court said:

"...The State Government is given the power to modify or annul any order of the Administrative Tribunal before it becomes effective either by confirmation by the State Government or on the expiration of the period of three months from the date of the order...It will thus be seen that the period of three months from the date of the order is provided in clause (5) in order to enable the State Government to decide whether it would confirm the order or modify or annul it. Now almost invariably the State Government would be a party in every service dispute brought before the Administrative Tribunal and the effect of the proviso to clause (5) is that the State Government which is a party to the proceeding before the Administrative Tribunal and which contests the claim of the public servant who comes before the Administrative Tribunal seeking redress of his grievance against the State Government, would have the ultimate authority to uphold or reject the determination of the Administrative Tribunal....Such a provision is, to say the least, shocking and is clearly subversive of the principles of justice." (See page 368)

15. This Court further explained that "...Now if the exercise of the power of judicial review can be set at naught by the State Government by overriding the decision given against it, it would sound the death knell of the rule of law. The rule of law would cease to have any meaning, because then it would be open to the State Government to defy the law and yet to get away with it. The proviso to clause (5) of Article 371-D is therefore clearly violative of the basic structure doctrine."

16. In a subsequent Constitution Bench decision of this Court in *L. Chandra Kumar v. Union of India and others*, AIR 1997 SC 1125, Chief Justice Ahmadi, after an analysis of different

decisions of this Court, affirmatively held that judicial review is one of the basic features of our Constitution. Such a finding of this Court, obviously means that there cannot be an administrative review of a decision taken by a judicial or a quasi judicial authority which has the trappings of a court. Since judicial review has been considered an intrinsic part of constitutionalism, any statutory provision which provides for administrative review of a decision taken by a judicial or a quasi judicial body is, therefore, inconsistent with the aforesaid postulate and is unconstitutional.

17. The learned senior counsel for the Union of India in this case has sought to support the impugned judgment by referring to the decision of this Court in the case of *Indo-China Steam Navigation Company Limited v. Jasjit Singh, Additional Collector of Customs, Calcutta, and Others* (AIR 1964 SC 1140). The said decision deals with the provisions of the Sea Customs Act, 1878, which is a pre-Constitutional law. Apart from that, the scheme of the Sea Customs Act would show that when a dispute is raised by an aggrieved party either by way of an appeal or revision, that dispute has to be decided in the light of the facts adduced in the proceedings. And this Court held that the decision of such an authority amounts to a decision which is given in accordance with the principles of natural justice and such proceedings are quasi judicial in nature. This Court also accepted that even though the status of the customs officer who adjudicates under Section 167 (12A) and Section 183 of the Act is not that of the tribunal, that does not make a difference when the matter reaches the stage of appeal and revision. On the basis of such reasoning, this Court held that when such disputes are decided by appellate or revisional authority, it becomes a tribunal within the meaning of Article 136 of the Constitution and such tribunals being invested with the judicial power of the State are required to act judicially and that they are tribunals within the meaning of Article 136 of the Constitution.

18. In the instant case, the issue is totally different. Here the issue is whether an order passed by a quasi judicial authority, which has the trappings of a civil court, can be reviewed by an administrative authority. Therefore, the ratio in *Indo-China Steam Navigation Company* (supra) does not support the case of the Union of India.

19. Mr. Nagendra Rai, learned senior counsel for the third respondent also wanted to support the impugned judgment by relying on the Constitution Bench decision of this Court in the case of *Harinagar Sugar Mills Ltd., v. Shyam Sunder Jhunjhunwala and others* (AIR 1961 SC 1669). In that case the issue raised was that of a company's power to refuse registration of transfer of share. On the refusal to register the transfer of shares, the aggrieved party has two remedies for seeking relief under the Companies Act. One was to apply to the Court for rectification of register and the other was to appeal to the Central Government under Section 111 of the Act against the resolution of the company refusing to register the share. In such a situation, this Court held that when Government, in exercise of its power of appeal under Section 111 Clause (3) is acting it is invested with the judicial power of the State to decide disputes according to law. In such a case, the Central Government is acting as a Tribunal and it is amenable to the jurisdiction of this Court under Article 136. (See paras 10 and 23 of the report).

20. As noted above, the issue in this case is not whether the administrator under the aforesaid statutory provision is a tribunal under Article 136 of the Act. The issue is, as discussed above, whether the administrative authority can sit in appeal over the decisions of a judicial or quasi judicial authority which has the trappings of the Civil Court. Therefore, the decision in Harinagar (supra) cannot sustain the impugned judgment.

21. Even though the Administrator under the aforesaid two Acts may be the Lieutenant Governor of the National Capital Territory of Delhi which may be a high constitutional authority, it cannot be disputed that the said authority is an executive authority.

22. Learned senior counsel for Delhi Municipal Corporation argued by referring to the provisions of Article 239AA of the Constitution, where provisions in respect to Delhi have been made. For a proper appreciation of this question, Article 239AA, sub-article (1) is set out below:-

"239AA. Special provisions with respect to Delhi.- (1) As from the date of commencement of the Constitution (Sixty-ninth Amendment) Act, 1991, the Union territory of Delhi shall be called the National Capital Territory of Delhi (hereafter in this Part referred to as the National Capital Territory) and the administrator thereof appointed under Article 239 shall be designated as the Lieutenant Governor."

23. In this connection, we can also refer to the provision of Government of National Capital Territory of Delhi Act, 1991, namely, Section 41 and particularly Section 41(3). Section 41 runs as under:

"41. Matters in which Lieutenant Governor to act in his discretion.

(1) The Lieutenant Governor shall act in his discretion in a matter-

(i) which falls outside the purview of the powers conferred on the Legislative Assembly but in respect of which powers or functions are entrusted or delegated to him by the President;

Or

(ii) in which he is required by or under any law to act in his discretion or to exercise any judicial or quasi-judicial functions.

(2) If any question arises as to whether any matter is or is not a matter as respects which the Lieutenant Governor is by or under any law required to act in his discretion, the decision of the Lieutenant Governor thereon shall be final.

(3) If any question arises as to whether any matter is or is not a matter as respects which the Lieutenant Governor is required by any law to exercise any judicial or quasi-judicial functions, the decision of the Lieutenant Governor thereon shall be final.

24. By referring to the aforesaid two provisions, the learned counsel argued that the Administrator, who is none other than the Lieutenant Governor, has no connection with the State and is totally independent. Therefore, when he hears the appeal, he does it as an independent appellate authority. This Court is unable to accept the aforesaid contention. It is not suggested for a moment that the Administrator, who is the Lieutenant Governor in Delhi is not acting independently. The question is: having regard to the concept of rule of law and judicial review, whether a review by an executive authority of a decision taken by the judicial or quasi-judicial authority which has the trappings of the Court is permissible. In view of the consistent opinion expressed by this Court in P. Sambhamurthy (supra) and L. Chandra Kumar (supra), discussed above, we are unable to uphold the constitutional validity of Section 347D of Delhi Municipal Corporation Act, 1957 and Section 256 of the NDMC Act. Both the aforesaid provisions are, therefore, declared unconstitutional being violative of Article 14 of the Constitution. In a recent Constitution Bench judgment of this Court in Union of India v. R. Gandhi, President, Madras Bar Association [(2010) 11 SCC 1], Justice Raveendran, speaking for the unanimous Bench held:-

"102. The fundamental right to equality before law and equal protection of laws guaranteed by Article 14 of the Constitution, clearly includes a right to have the person's rights, adjudicated by a forum which exercises judicial power in an impartial and independent manner, consistent with the recognised principles of adjudication. Therefore wherever access to courts to enforce such rights is sought to be abridged, altered, modified or substituted by directing him to approach an alternative forum, such legislative Act is open to challenge if it violates the right to adjudication by an independent forum. Therefore, though the challenge by MBA is on the ground of violation of principles forming part of the basic structure, they are relatable to one or more of the express provisions of the Constitution which gave rise to such principles. Though the validity of the provisions of a legislative Act cannot be challenged on the ground it violates the basic structure of the Constitution, it can be challenged as violative of constitutional provisions which enshrine the principles of the rule of law, separation of powers and independence of the judiciary."

25. In view of this decision by this Court, till a proper judicial authority is set up under the aforesaid Acts, the appeals to the Administrator under Section 347D of the Delhi Municipal Corporation Act, 1957 and also under Section 256 of the NDMC Act shall lie to the District Judge, Delhi. All pending appeals filed under the erstwhile provisions, as aforesaid, shall stand transferred to the Court of District Judge, Delhi. However, the decisions which have already been arrived at by the Administrator under the aforesaid two provisions will not be reopened in view of the principles of prospective overruling.

26. The judgment of the High Court is, therefore, set aside and the appeal is allowed. There will be, however, no orders as to costs.