

L. CHANDRA KUMAR
v.
UNION OF INDIA AND OTHERS

DECEMBER 2, 1994

[KULDIP SINGH, B. L. HANSARIA AND S. B. MAJMUDAR, JJ.]

Constitution of India—Articles 324–A and 324–B Administrative Tribunals Act 1985—Section 5(6) Constitutional validity of—Matters arising out of judgement of Constitution Bench in S. P. Sampath Kumar v. Union of India, and subsequent decisions referred to larger Bench.

In a matter involving an examination of Section 5(6) of the Administrative Tribunals Act 1985, this Court was confronted with wider issues relating to the composition, jurisdiction, power and authority of Tribunals constituted under Articles 324-A and 324-B. Referring the matter to a larger Bench, this Court

HELD : In view of the decision in *S. P. Sampath Kumar's* case, by which a Constitution Bench of this Court decided the vires of the Administrative Tribunals Act 1985, and observations made therein, the matter be placed before a larger Bench for reconsideration. Subsequent decisions on matters adjudicated upon in *Sampath Kumar* are also referred to the larger Bench.

The issues referred to larger Bench include.

1. Whether Tribunals can be equated with High Courts. [263 B]
2. The jurisdiction, power and authority of Administrative Tribunals to adjudicate upon questions of constitutional validity of legislations and of rules. [263 C]
3. Whether a Tribunal which has the power to decide on the constitutional validity of a statute or rule made under Article 309 can have an Administrative Member on its Bench. [265 C]
4. Whether the power of judicial review held to be available to Administrative Tribunals as per *Sampath Kumar's* Case violates the basic structure of the Constitution. [263 H]

S. P. Sampath Kumar v. Union of India, [1987] 1 SCC 124, referred to a larger Bench alongwith *J. B. Chopra v. Union of India*, AIR (1987)

- A SC 357, *Amulya Chandra Kalita v. Union of India*, [1991] 1 SCC 181, *Dr. Mahabal Ram. v. Indian Council of Agricultural Research*, [1994] 2 SCC 401, *Sakinala Harinath v. State of Andhra Pradesh*, (1994) 1 APLJ 1 as assailed in C.A. No. 169 of 1994 which has been referred to a Constitution Bench, *M. B. Majumdar v. Union of India*, AIR (1990) SC 2263 *State of Orissa v. Bhagwan Sarangi S.L.P. (C) No. 2129 of 1991* disposed of on October 1, 1991 and *R.K. Jain v. Union of India*, [1993] 4 SCC 119.
- B

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 481 of 1989
Etc. Etc.

- C From the Judgment and Order dated 2.11.88 of the Madras High Court in W. P. No. 8673 of 1988.

M. Rama Jois, N.N. Goswamy, V. Balachandran, T. Harish Kumar, V. Ramasubramanian, (Ms. Kiran Jethanand) S. R. Bhat, Ms. Sushma Suri, Pravin Choudhary, M. A. Krishna Moorthy, M. Veerappa, Hemant Sharma
D and C.V.S. Rao for the appearing parties.

The following order of the Court was delivered :

- E The challenge to the validity of Section 5 (6) of the Administrative Tribunals Act, 1985 (the 'Act') has unmasked greater issues, to examine which, we have come to the conclusion that the judgement of this Court in *S. P. Sampath Kumar v. Union of India*, [1987] 1 SCC 124, which is by a Constitution Bench of five learned Judges, needs to be reconsidered by a larger Bench. Our reasons follow.

- F The Constitution (Forty-second Amendment) Act, 1976 inserted Part XIV-A in the Constitution which contains Articles 323-A and 323-B. These Articles conceive of setting up of various tribunals as adjudicatory bodies. They *inter alia*, contain provisions which enable, not only the Parliament but even State legislatures, to exclude the jurisdiction of all courts except that of this Court under Article 136 with respect to matters falling within the jurisdiction of the concerned tribunals. The Act came to be enacted by
G the Parliament in exercise of the powers conferred on it by Article 323-A of the Constitution. The vires of the Act was challenged before this Court which was upheld in *Sampath Kumar's* case.

- H While upholding the validity of Section 28 of the Act in *Sampath Kumar's* case this Court took the view that the power of judicial review need not always be exercised by regular courts and the same can be

exercised by an equally efficacious alternative mechanism. Apart from making suggestions relating to the eligibility etc. of the persons who could be appointed as Chairman, Vice-Chairmen or Members of the Tribunal this Court stated that every bench of the Tribunal should consist of one judicial Member and one Administrative Member.

The primary reason, according to us, for having a fresh-look at the issues involved in *Sampath Kumar's* case is the observations of the Bench therein by which the tribunals have been equated with the High Courts. A two-Judge Bench of this Court in *J. B. Chopra v. Union of India*, AIR (1987) SC 357 relying upon *Sampath Kumar* has held that the Tribunals have the jurisdiction, power and authority even to adjudicate upon questions pertaining to the constitutional validity or otherwise of a rule framed by a President of India under the provision to Article 309 of the Constitution. They can even adjudicate on the vires of the Acts of Parliament and State Legislatures. Section 5(6) of the Act gives this power, if the Chairman of the tribunal so desires, even to a single Administrative Member. It is a different matter that no Chairman would like to do so; but that has no relevance while examining the validity of the sub-section which reads as below :—

“Notwithstanding anything contained in the foregoing provisions of this section, it shall be competent for the Chairman or any other Member authorised by the Chairman in this behalf to function as a Bench consisting of a single Member and exercise the jurisdiction, powers and authority of the Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the Chairman may by general or special order specify:

Provided that if at any stage of the hearing of any such case or matter it appears to the Chairman or such Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members the case or matter may be transferred by the Chairman or, as the case may be, referred to him for transfer to, such Bench as the Chairman may deem fit.”

In *Amulya Chandra Kalita v. Union of India*, [1991] 1 SCC 181, a two-Judge Bench of this Court held that the Administrative Member of Tribunal alone is not competent to hear and decide a case. This view was taken after referring to what has been pointed out in *Sampath Kumar's* case requiring

- A Bench of the Tribunal to consist of one Judicial Member and one Administrative Member following which observation, the Act was amended to say so, vide its Section 5 (2) as substituted by Act 19 of 1986. The attention of the Bench deciding *Amulya Chandra Kalita's* case, however, was not invited to Section 5 (6).
- B This aforesaid point came to be examined again; and this time a three-Judge Bench in *Dr. Mahabal Ram v. Indian Council of Agricultural Research*, [1994] 2 SCC 401. (The judgement was, however, rendered on May 3, 1991). When the attention of this Bench was drawn to Section 5(6) of the Act, it opined that any matter involving questions of law or interpretation of constitutional provision should be assigned to a two-Member Bench and parties can request the single Member to refer the matter to a larger bench of two Members and such request should ordinarily be accepted. In pursuant to these observations an order was passed by the Chairman of the Central Administrative Tribunal on December 18, 1991 which is in consonance with the same. It deserves notice that in *Mahabal Ram's* case there was no challenge to the validity of sub-section (6), but the same has been assailed here.
- D

- Shri Rama Jois, in assailing the validity of sub-section (6), has raised larger issues before us one of which relate to the view taken in *Sampath Kumar's* case that judicial power need not always be exercised by regular courts. According to the learned counsel, this is contrary to the dicta laid down even in *Kesvananda Bharati v. State of Kerala*, AIR (1973) SC 1461. Indeed, this is a view which has been taken recently, by a Full Bench of Andhra Pradesh High Court in *Sakinala Harinath v. State of Andhra Pradesh*, (1994) 1 APLJ 1. For the sake of completeness it may be mentioned that the decision in *Sakinala* has been assailed before this Court in C.A. No. 169/94 which has been referred to a Constitution Bench.
- E

- F Another facet of the case focussed by Shri Rama Jois relates to the equality of status between the Tribunals and the High Courts. A note discordant to that of *Sampath Kumar* was struck in this regard by a three-Judge Bench of this Court in *M. B. Majumdar v. Union of India*, AIR (1990) SC 2263, holding that Administrative Tribunals cannot be equated with the High Courts in all respect and they are not deemed High Courts, because of which Members of Tribunals cannot claim equality with High Court Judges as regards pay and age of superannuation. Mention may also be made about the view taken by this Court in *State of Orissa v. Bhagwan Sarangi*, [SLP (C) No. 2129/91 disposed of on 1-10-91] that a Tribunal established under the Act is nonetheless a tribunal and it cannot side-track a decision of the concerned High Court.
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- H

It would not be out of place to refer to a three-Judge Bench decision of this Court in *R. K. Jain v. Union of India*, [1993] 4 SCC 119, in which need for the Members of the tribunal (which was CEGAT in that case set up with the aid of Article 323-B but what was stated therein would apply *proprio vigore* to the Tribunal at hand) having adequate legal expertise, judicial experience and legal training was emphasised to enable the Tribunal to become effective alternative institutional mechanism and to dispense with High Courts' power of judicial review. Ramaswamy, J., however, opined that such tribunals being creature of statutes can in no case claim the status of the High Court or parity or as substitutes.

The aforesaid post-Sampath Kumar cases do require in our considered view, a fresh look by a larger-Bench over all the issues adjudicated by this Court in *Sampath Kumar's* case including the question whether the Tribunal can at all have an Administrative Member on its Bench, it were to have the power of even deciding constitutional validity of a statute or 309 Rule, as conceded in *Chopra's* case (supra). Examination of this aspect would be necessary to instill confidence in the minds of people (and litigants) which is the greatest prop of the judiciary.

Let the records be placed before Hon'ble the Chief Justice of India for constitution of an appropriate Bench.

U. R.