



L.CHANDRA KUMAR vs. UOI
A.I.R 1997 SC 1125

vs.
UNION OF INDIA

Constitutional validity of Art. 323 of the
Constitution of India

BACKGROUND

- For a long time, search was going on for a mechanism to relieve the courts, including High Courts and the Supreme Court, from the burden of service litigation which formed a substantial portion of pending litigation.
- As early as in 1958, this problem engaged the attention of the Law Commission which recommended for the establishment of tribunals consisting of judicial and administrative members to decide service matters.
- In 1969 Administrative Reform Commission also recommended for the establishment of civil service tribunals both for the Central and State civil servants.

BACKGROUND

- In 1975, Swarn Singh Committee again recommended for setting up of service tribunals.
- It was against this backdrop that Parliament passed Constitution (Forty- Second Amendment) Act, 1976, which added Part- XIV- A in the Constitution. This Part is entitled as 'Tribunals' and consists of only two Articles- Article 323-A, dealing with administrative tribunals and Article 323-B, dealing with tribunals for other matters



BRIEF INTRODUCTION TO ART.323

- While Article 323-A contemplates establishment of tribunals for public service matters only, Article 323-B contemplates establishment of tribunals for certain other matters (taxation, foreign exchange, industrial and labour disputes, land reforms, elections to Parliament and State Legislatures etc.)
- While tribunals under Article 323-A can be established only by the Parliament, tribunals under Article 323-B can be established both by Parliament and State Legislatures with respect to matters falling within their legislative competence.
- Under Article 323-A, only one tribunal for the Centre and one for each State or two or more States may be established, there is no question of hierarchy of tribunals; whereas under Article 323-B a hierarchy of tribunals may be created.

FACTS

- There were special leave petitions, civil appeals and writ petitions pertaining to the constitutional validity of sub-clause (d) of clause (2) of Article 323-A and sub-clause (d) of clause (3) of Article 323-B of the Constitution of India, 1950; and also in regards to the constitutional validity of the Administrative Tribunals Act, 1985; moreover what was also the subject of challenge was whether the Tribunals constituted under Part XIV- A of the Constitution of India can be effective substitutes for the High-Courts in discharging the power of judicial review.

ISSUES

- 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?
- 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?
- Whether the power conferred upon Parliament or 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, 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?



CRITICAL ANALYSIS

- In pursuance of the power conferred upon it by Clause (1) of Article 323- A of the Constitution, the Parliament enacted the Administrative Tribunals Act, 1985.
- Pursuant to the provisions of the Administrative Tribunals Act 1985, the Central Administrative Tribunal (CAT) comprising of five Benches was established on 1 November 1985. However, even before CAT had been established, several writ petitions had been filed in various high-courts as well as the Supreme Court challenging the constitutional validity of Article 323- A, as also the provisions of the Administrative Tribunals Act 1985.
- The exclusion of judicial review under Articles 226, 227 and 32 was questioned as violating the basic structure of the Constitution in *S.P. Sampath Kumar v. UOI*.

CRITICAL ANALYSIS

- In *S.P. Sampath Kumar v. UOI*, in the final decision the Court held that Section 28 which excludes jurisdiction of the High-Courts under Articles 226/227 is not unconstitutional. The Court ruled that this section does not totally bar judicial review. It also said that Administrative Tribunals under the 1985 Act are substitute of High- Courts and will deal with all service matters even involving Articles 14, 15 and 16. It also advised for changing the qualifications of Chairman of the tribunal.
- In *J.B. Chopra and Ors v. UOI*, AIR 1987 SC 357, a Division Bench of the Supreme Court held that *“the Administrative Tribunal being a substitute power of the High Court had the necessary jurisdiction, power and authority to adjudicate upon all disputes relating to service matters including the power to deal with all questions pertaining to the Constitutional validity or otherwise of such laws as offending Articles 14 and 16(1) of the Constitution.”*

CRITICAL ANALYSIS

- In *M.B. Majumdar v. UOI*, AIR 1990 SC 2263, The court, after analysing- the text of Article 323-A of the Constitution, the provisions of the impugned Act, and the decision in *Sampath Kumar*, rejected the contention that the tribunals were the equals of the high-courts in respect of their service conditions.
- In *R.K. Jain v. UOI*, (1993) 4 SCC 119, Justice Ramaswamy analysed the relevant constitutional provisions; the decision in *Sampath Kumar*, *J.B. Chopra* and *M.B. Majumdar*, and held that the tribunals created under Articles 323-A and 323-B could not be held to be substitutes of High- Courts for the purpose of exercising jurisdiction under Articles 226 and 227 of the Constitution.

CRITICAL ANALYSIS

- In *L. Chandra Kumar v. UOI*, (1995) 1 SCC 400, a Division Bench of the Supreme Court expressed the view that the decision rendered by the Constitutional Bench of five Judges in *Sampath Kumar* case needed to be “comprehensively reconsidered”, and a “fresh look by a larger Bench over all the issues adjudicated in *Sampath Kumar* case was necessary”. In the light of the opinion of the Division Bench, the matter was placed before a larger Bench of seven Judges.

OBSERVATION BY LARGER BENCH

- The power of judicial review is a basic and essential feature of the Constitution and the jurisdiction conferred on High Courts under Articles 226 and 227 and on Supreme Court under Article 32 of the Constitution is a part of the basic structure of the Constitution.
- For securing independence of judiciary, the judges of superior courts have been entrusted with the power of judicial review. Though the Parliament is empowered to amend the Constitution, the power of amendment cannot be exercised so as to damage the essential feature of the Constitution or to destroy its basic structure.
- The High Courts and the Supreme Court have been entrusted with the task of upholding the Constitution (i.e. furthering the ends of the Constitution) and with a view to achieving that end, they have to interpret the Constitution.

VERDICT OF THE COURT

- The Court held that Section 28 of the Administrative Tribunals Act, 1985 and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the extent that they exclude the jurisdiction of the High-Courts (under Articles 226 and 227) and the Supreme Court (under Article 32) would be ultra-vires the Constitution.
- The Court held that there was no Constitutional prohibition against administrative tribunals in performing a supplemental as opposed to a substitutional role; that is in exercising their powers such tribunals cannot act as substitutes for High-Courts and the Supreme Court. Their decisions will be subject to scrutiny by a Division Bench of the respective High-Courts i.e. all decisions of these tribunals (tribunals created under Articles 323-A and 323-B of the Constitution of India) will be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned tribunal falls.

VERDICT OF THE COURT

- Lastly, the Court upheld Section 5(6) of the Administrative Tribunals Act, 1985 as valid and constitutional and held that Sections 5(2) and 5(6) of the Act must operate together and must be harmoniously construed i.e. where a question involving the interpretation of a statutory provision or rule in relation to the Constitution arises for 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.



THANK YOU