

into State of Telangana and State of Andhra Pradesh. As such they have come to this Court in writ jurisdiction straightaway, ignoring 1st respondent.

3. The facts are not in dispute. Petitioners are the State Government Employees of undivided State of Andhra Pradesh. Disputes in relation to their services would have been entertained and resolved at the first instance by first respondent before the appointed day. The Government of the then State of Andhra Pradesh had made a request to the Central Government, who, in its turn acting under Section 4 (2) of the Administrative Tribunals Act, 1985 (hereinafter referred to as 'Act, 1985') issued notification dated 26.10.1989 (hereinafter referred to as 'the said notification') whereunder 1st respondent was established with effect from 1.11.1989. In view of split of erstwhile State of Andhra Pradesh, the 1st respondent ceases to exist in the eye of law.

4. Counter-affidavits have been filed by the respective respondents. While denying the contentions of the petitioners, they assert that the 1st respondent continues to function as it is, even after bifurcation of the erstwhile State of A.P., like a common Tribunal for both the States. Therefore, the petitioners could not skip 1st respondent, to invoke the jurisdiction of this Court straightaway, which is absolutely prohibited in view of the judgment rendered by the Hon'ble Apex Court in *L. Chandra Kumar v. Union of India*^[1].

5. The learned Senior Counsel for the petitioners, while placing various provisions of the Act, 2014, submits that there is no provision conferring power upon the 1st respondent, which was functioning on or before the appointed day, to function either for both the States or one of the States, unlike functioning of this High Court as a common one for both the States. He submits that the Act, 2014 has been enacted almost on the same lines as it has been done in case of Madhya Pradesh Reorganization Act, 2000 (hereinafter referred to as 'M.P. Act'). He has drawn our attention to Section 74 of the M.P. Act, which enabled the existing counterpart of 1st

respondent in that State to continue to function as a common Tribunal for both the split States on and from the appointed day for a maximum period of two years or till such time as is decided by mutual agreement between the successor States. Similar provision has not been made in the Act, 2014 for functioning of 1st respondent. He submits further that the conferment of power or jurisdiction of any authority has to be made expressly by law, not impliedly. No inference can be drawn with regard to conferment of jurisdiction on 1st respondent, which it is claiming to have. When the statute does not clearly mention, it has to be understood that 1st respondent has no power to function, as such it is non-existent. He further submits that the 1st respondent has to be constituted under sub-section (2) of Section 4 of the Administrative Tribunals Act, 1985. At present, neither of the State Governments has made any request to the Central Government to establish the same, consequently no action under law could be taken by the centre. There has been no agreement between the two States for functioning of the 1st respondent as a common one as required under sub-section (3) of Section 4 of the aforesaid Tribunals Act, 1985. Until this happens, no Tribunal can be said to have been constituted lawfully. Consequently, jurisdiction cannot be exercised by the 1st respondent under Section 16 of the Administrative Tribunals Act, 1985.

6. In support of his submission, he has placed reliance on the following decisions of the Supreme Court.

1. *Subrata Roy Sahara v. Union of India* ^[2]
2. *M.P. High Court Bar Association v. Union of India* ^[3]
3. *Rohitash Kumar v. Om Prakash Sharma* ^[4]
4. *M.L. Sethi v. R.P. Kapur* ^[5]
5. *A.R. Antulay v. R.S. Nayak and another* ^[6]
6. *Union of India v. Sankalchand Himatlal Sheth and another* ^[7]
7. *Hardeep Singh v. State of Punjab* ^[8]

8. *Arnesh Kumar v. State of Bihar* ^[9]
9. *S.P. Gupta v. Union of India* ^[10]
10. *General Manager, South Central Railway v. A.V.R. Siddhanthi* ^[11]
11. *L. Chandra Kumar v. Union of India* (1 *supra*)
12. *Workmen of D.T. Estate v. Their Management* ^[12]
13. *Jayantilal Amratlal Shodhan v. F.N. Rana* ^[13]
14. *Dr. Duryodhan Sahu v. Jitendra Kumar Mishra* ^[14]
15. *Anisminic Limited v. Foreign Compensation Commission* ^[15]

7. The learned Advocate General for the State of Telangana, while opposing this application, contends that the contention of the petitioners that the 1st respondent ceases to function in view of bifurcation is totally wrong in the eye of law. He urges that 1st respondent, which was formed admittedly vide notification issued earlier as stated in the writ petition has to function for both the successor States in view of provision of Section 101 of Act, 2014, which is almost similar in terms and words to Section 84 of the Bihar Reorganization Act, 2000. He contends that the said notification is deemed to be “law” within the meaning of the Section 100 of Act, 2014 read with Section 2 (f) thereof. This legal provision is clear and unambiguous, anything in addition thereto would be surplusage. In support of his submission, he placed reliance upon a decision of the Supreme Court in *CCT v. Swarn Rekha Cokes and Coals (P) Limited* ^[16].

8. The learned Advocate General for the State of Andhra Pradesh supports the contention of his counterpart of State of Telangana.

9. Ninth respondent has appeared in person and supports the argument of the learned Advocate General. In addition thereto, he contends that the Central Government in writing, dated 25.4.2014 clarified that the 1st respondent will continue to function even after bifurcation on the verbal query

raised by the then Government of Andhra Pradesh prior to 2nd June, 2014 on this issue with reference to the provisions of Act, 2014.

10. The learned lawyer for Union of India while placing the document mentioned by the ninth respondent, submits that the Government has clarified the status of the 1st respondent after bifurcation.

11. After considering the facts as well as the contentions of the learned counsel for the parties, we think that the legal issue as to the status of 1st respondent on bifurcation of erstwhile Andhra Pradesh as questioned by the petitioners has to be addressed first. In the event we negative the contention of the petitioners, we need not decide the petitioners' grievance with regard to services as it is the absolute domain of the tribunal viz., 1st respondent, at the first instance.

12. We now proceed to examine the core issue as to whether the tribunal which was functioning before the Act, 2014 came into force can continue to function in terms of Act, 2014 after the appointed day for the present.

13. The learned Senior counsel for the petitioners is legally correct in his contention that unlike the provision of Section 74 of the M.P. Act, 2000, there is no express provision in the Act, 2014 for functioning of the first respondent as a common institution for both the successive States. We also notice, as correctly pointed out by the learned Senior Counsel for the petitioners, no separate provision like Section 30 of Act, 2014 providing for a common High Court, has been made for functioning of first respondent. But, we are of the view that absence of such express provisions is not a pointer to accept the contention of the learned Senior Advocate for the petitioners, if on reading of the Act, 2014 in its entirety, authority of the 1st respondent to continue to function as a common institution is traceable. If we examine the provisions of Act, 2014 carefully, as correctly contended by the learned Advocate General for both the States, and the 1st respondent and the Union

of India, we notice that by virtue of Section 100 of Act, 2014, the laws which were immediately in force before the appointed day will apply to both the successor States until occurrence of such events as mentioned in the said Section takes place. Therefore, we set out Section 100 of the Act, 2014.

100. Territorial extent of laws:- The provisions of Part II shall not be deemed to have affected any change in the territories to which the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (Andhra Pradesh Act No.1 of 1973) and any other law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Andhra Pradesh shall, until otherwise provided by a competent Legislature or other competent authority be construed as meaning the territories within the existing State of Andhra Pradesh before the appointed day.

14. On a careful reading of this section, it appears to us that Part-II of Act, 2014 that primarily provides for bifurcation of the then State of A.P. into two States carving out its territory as mentioned in Sections 3 & 4 does not affect applicability of the laws which were in force on 2nd June, 2014, so long as the competent legislature or competent authority decides otherwise. We feel that this provision has been made by the legislature enabling two successor States to run their administration with the help of the existing law so long as they want, as provided therein. Section 74 of M.P. Act provides for functioning of, amongst other, Tribunals like 1st respondent for a maximum period of two years as common for both the States. Had this provision not been in that Act, the Tribunal of this nature would have to continue to function even after bifurcation as a common one by virtue of Section 78 of the M.P. Act even beyond two years, in the event steps were not taken as mentioned in that Section. We feel it appropriate to reproduce both the Sections of M.P. Act hereunder for the sake of convenient understanding.

74. Jurisdiction of the Commissions, Authorities and Tribunals:-

(1) Notwithstanding anything contained in any law for the time being in force, every Commission, Authority, Tribunal, University, Board or any other body constituted under a Central Act, State Act or Provincial Act and having jurisdiction over the existing State of Madhya Pradesh shall on and from the appointed day continue to function in the successor State of Madhya Pradesh and also exercise jurisdiction as existed before the appointed day over the State of Chattisgarh for a maximum period of two years from the

appointed day or till such period as is decided by mutual agreement between the successor States:-

- (i) to continue such body as a joint body for the successor States; or
- (ii) to abolish it, on the expiry of that period, for either of the successor States; or
- (iii) to constitute a separate Commission, Authority, Tribunal, University, Board or any other body, as the case may be, for the State of Chattisgarh, whichever is earlier.

(2) No suit or other legal proceeding shall be instituted, in case such body is abolished under clause (ii) of sub-section (1), by any employee of such body against the termination of his appointment or for the enforcement of any service conditions or for securing absorption in alternative public employment against the Central Government or any of the successor States.

(3) Notwithstanding anything contained in any law for the time being in force or in any Judgment, decree or order of any Court or Tribunal or agreement, any Chairman or Member of any body abolished under clause (ii) of sub-section (1) shall not be entitled to any compensation for the unexpired period of this tenure.

(4) Notwithstanding anything contained in this section or any law for the time being in force, the Central Government, shall, in accordance with any mutual agreement between the successor States or if there is no such agreement, after consultation with the Governments of the successor States, issue directions for the resolution of any matter relating to any body referred to in sub-section (1) and falling within the jurisdiction of any of the successor States within any period referred to in sub-section (1).

78. Territorial extent of laws:- The provisions of Part II of this Act shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Madhya Pradesh shall, until, otherwise provided by a competent Legislature or other competent authority be constituted as meaning the territories within the existing State of Madhya Pradesh before the appointed day.

15. Thus the M.P. Act cannot be a comparative instance in this case.

16. The definition of law has been given in Section 2 (f) of the Act, 2014, which is set out hereunder:

2(f). “law” includes any enactment, ordinance, regulation, order, bye-law, rule, scheme, notification or other instrument having, immediately before the appointed day, the force of law in the whole

or in any part of the existing State of Andhra Pradesh.

17. It is an undisputed fact that the 1st respondent started functioning on notification as above issued by the Central Government on the request of the then undivided State of Andhra Pradesh. Going by the definition of law mentioned above, there is hardly any scope to dispute that the notification has the effect of law. Hence, by virtue of the said notification the tribunal will continue to function irrespective of the territorial reorganization by the Act, 2014. We find force in the argument of the learned Advocates General for both the States as well as the learned counsel for the Central Government that no express provision like M.P. Act, 2000, or for that matter provision of commonness itself in the Act is required in view of Section 100 of the Act, 2014. According to us, the document placed by the ninth respondent and learned lawyer for the Central Government purporting to clarify the status of the 1st respondent is not required in these cases as the provision of the law is clear. In any view of the matter, this document is not an order of the President within the meaning of Section 108 of the Act.

18. What is the force of the notification of this sort issued before bifurcation of State came to be examined by the Supreme Court in case of *CCT v. Swarn Rekha Cokes and Coals (P) Limited* (16 supra). The Supreme Court, in that case, was examining Section 2 (f) and Section 84 of Bihar Reorganization Act which are almost similar to Sections 2 (f) & 100 of Act, 2014. In paragraph-27 of the said report, the Apex Court in this context stated the law, amongst others which is relevant for our purpose, as follows:

27. ... However, Section 84 in express terms, provides that the provisions of Part II shall not be deemed to have effected any change in the territories to which any law in force immediately before the appointed day extended or applied and the territorial references in any such law to the State of Bihar shall, until otherwise provided by a competent legislature or other competent authority, be construed as meaning the territories within the existing State of Bihar before the appointed day. Section 85 provides that for the purpose of facilitating the application in relation to the State of Bihar or Jharkhand of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent legislature or other competent authority. The language in these sections is clear and unambiguous. These sections provide that the laws which were applicable to the undivided State of Bihar would continue to apply to the new States created by

the Act. The laws that operated continue to operate notwithstanding the bifurcation of the erstwhile State of Bihar and creation of the new State of Jharkhand. They continue in force until and unless altered, repealed or amended. It is not disputed before us and indeed it cannot be disputed in view of the wide definition given to “law” in Section 2(f) of the Act that the notification issued under Section 7(3)(b) of the Bihar Finance Act, 1981 is law within the meaning of Sections 84 and 85 of the Act. Thus, the notification published in the Bihar Gazette on 22-12-1995 bearing SO No. 478 continues to operate in the State of Jharkhand till such time as it is altered, repealed or amended. **By virtue of Section 84, the territorial references in any such law (which includes the notification in question), to the State of Bihar shall be construed as meaning the territories within the existing State of Bihar before the appointed day, until otherwise provided by a competent legislature or other competent authority. A conjoint reading of both these provisions makes it abundantly clear that the territorial references in any law in force immediately before the appointed day must be construed as meaning the territories within the existing State of Bihar before the appointed day. To facilitate their application in respect of the State of Bihar or Jharkhand, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law as it may consider necessary or expedient by way of repeal or amendment. Till such law is so repealed or amended in accordance with law, it shall have effect.** After their amendment or alteration, they shall have effect subject to the adaptations and modifications made. We, therefore, find no difficulty in holding that the notification of the Government of Bihar issued under Section 7(3)(b) of the Bihar Finance Act, 1981 and published in the gazette on 22-12-1995 being SO No. 478 is law as defined by Section 2(f) of the Act. The said notification holds the field and applies to all the territories which comprised the undivided State of Bihar. The States of Bihar and Jharkhand have been vested with power to make such adaptations and modifications of the law as they may consider necessary or expedient. This they can do by issuance of order before the expiration of two years from the appointed day. After the adaptations and modifications of the law, the law shall have effect as so modified or adapted till such time as a competent legislature or other competent authority further alters, repeals or amends such law.

(emphasis supplied)

19. In the case of *CCT v. Swarn Rekha Cokes and Coals (P) Limited* (16 supra), the Hon’ble Supreme Court was examining whether the notification issued by undivided State of Bihar in exercise of power conferred by Section 7(3)(b) of the Bihar Finance Act, 1981, dated 22.12.1995 giving some benefit of exemption could be applied even after bifurcation of the State of Bihar in the territory of Jharkhand or not. In that context, it was held that the aforesaid notification issued under the Bihar Finance Act, 1981 was a ‘law’ within the definition of Bihar Reorganization Act, 2000.

20. In our case, this notification was issued under Section 4 (1) & (2) of Administrative Tribunals Act, 1985 by the Central Government. In view of the aforesaid Supreme Court pronouncement, we, without any hesitation, hold for the sake of reiteration that the effect of the notification is “law” within the meaning of Section 2 (f) of Act, 2014 and the same will continue to remain in force by virtue of Section 100 of Act, 2014 irrespective of the bifurcation of

the State, consequently 1st respondent will function until and unless fresh action is taken by both newly formed States under Section 101 read with Section 100 of Act, 2014, before expiration of the period mentioned therein. We, therefore, conveniently reproduce Section 101 of Act, 2014 hereunder.

101. Power to adapt laws:- For the purpose of facilitating the application in relation to the State of Andhra Pradesh or the State of Telangana of any law made before the appointed day, the appropriate Government may, before the expiration of two years from that day, by order, make such adaptations and modifications of the law, whether by way of repeal or amendment, as may be necessary or expedient, and thereupon every such law shall have effect subject to the adaptations and modifications so made until altered, repealed or amended by a competent Legislature or other competent authority.

Explanation:- In this section, the expression “appropriate Government” means as respects any law relating to a matter enumerated in the Union List, the Central Government, and as respects any other law in its application to a State, the State Government.

21. It would not be inappropriate to mention that provisions of Section 100 of Act, 2014 will have overriding effect by virtue of Section 107 of the Act, 2014.

22. In view of this clear legal position with regard to the functioning of 1st respondent, as discussed above, we think the argument of the learned lawyer for the petitioners that steps under sub-sections (2), (3) & (4) of Section 4 of the Administrative Tribunals Act, 1985 are required to be taken for functioning of the 1st respondent, has no substance. We are of the opinion that for creation of the 1st respondent, above legal provision is to be resorted to, not for continuation of functioning of the 1st respondent already constituted. We are of the view, rejecting the contention of the learned lawyer for the petitioners, that the express provision as mentioned in M.P. Act, 2000, for functioning of the existing 1st respondent is not required in view of the provisions of Sections 100 & 101 of Act, 2014. The legislative intention in providing Section 74 in the M.P. Act is clear as we have already

discussed. Had it been the same intention of the Legislature, it would have been reflected expressly in Act, 2014.

23. The learned counsel for the petitioners, notwithstanding, contends that the notification cannot be a law as it could be found in a Supreme Court judgment in case of *Jayantilal Amratlal Shodhan v. F.N. Rana* (13 supra). We are unable to persuade ourselves to agree with this apparently attractive argument.

24. In the case of *Jayantilal Amratlal Shodhan v. F.N. Rana* (13 supra), a Constitution Bench of the Supreme Court was dealing with the notification issued by the President of India under Article 258 (1) of the Constitution of India entrusting the Commissioner of Baroda of undivided Bombay State for acquisition of a piece of land for public purpose and consequently, steps were taken by the Additional Special Land Acquisition Officer who was appointed by the Commissioner to perform the function of the Collector for the purpose of acquisition process under Land Acquisition Act, 1894, in the context of provision of Section 87 and Section 2 (d) of Bombay Reorganization Act, 1960.

25. In that case, the President of India, on July 24, 1959, issued a notification for the above purpose in relation to the land situated within the limits of the territorial jurisdiction of the said Commissioner, subject to the same control by the Government of Bombay. On the date of the notification, the territory which now forms part of the State of Gujarat and in which the land in dispute is situated was part of the State of Bombay, but on May 1, 1960, being the appointed day as a result of the reorganisation of the State of Bombay under the Bombay Reorganisation Act, 1960, it fell outside the territory of that State, two States were carved out - the State of Maharashtra and the State of Gujarat, and the territory covering the Baroda Division was allotted to the State of Gujarat. By Section 87 of the Bombay Reorganisation Act, 1960, provision was made for maintaining the territorial extent of the laws even after the appointed day. It was enacted that provisions of Part-II i.e., relating to the reorganisation of Bombay State into two States shall not be

deemed to have effected any change in the territorial extent of land even after the appointed day. The provisions of Section 87 and the definition of laws were similar to the present case on hand.

26. The majority view of the above bench considering the judgment of the same Court in the case of *Edward Mills Co. Ltd., Beawar v. State of Ajmer* reported in AIR 1955 SC 25 = (1955) 1 SCR 735 has held in paragraph-17, amongst others and which are relevant for our purpose, as follows:

“... ..In our view, the *Edward Mills case* strongly supports the conclusion that the notification issued by the President conferring authority upon the Commissioner to exercise the powers of the appropriate Government in the matter of land acquisition under the Land Acquisition Act has the force of law because even though issued by an executive authority, the Courts are, if challenged, bound to recognise and give effect to the authority conferred by the notification. We see no distinction in principle between the notification which was issued by the Governor-General in *Edward Mills case*, and the notification with which we are dealing in this case. This is not to say that every order issued by an executive authority has the force of law. If the order is purely administrative, or is not issued in exercise of any statutory authority it may not have the force of law. But where a general order is issued even by an executive authority which confers power exercisable under a statute, and which thereby in substance modifies or adds to the statute, such conferment of powers must be regarded as having the force of law.”

27. It is apposite to note that in the *Edward Mills’ case* (supra) it was held that a notification issued in exercise of powers under Section 94 (3) of the Government of India Act, 1935, directing that the functions of the appropriate Government under Minimum Wages Act 11 of 1948 would, in respect of every chief Commissioner’s province, be exercised by the Chief Commissioner of Ajmer, was held to be “law in force” within the meaning of Article 372 of the Constitution of India after commencement of the Constitution of India.

28. With great respect, we follow the majority view in preference to the minority view expressed in the same judgment to hold that notification issued for formation of the 1st respondent is ‘law’.

29. In the case of *M.P. High Court Bar Association v. Union of India* (3

supra), the Supreme Court was called upon to examine the challenge to Section 74 of the Madhya Pradesh Reorganization Act, 2000 as to its constitutional validity. By this section, the aforesaid Act enabled a number of institutions, including tribunals, to continue to function on and from the appointed day in the successor States of Madhya Pradesh and Chhattisgarh and also exercise jurisdiction, as existed before the appointed day, over the State of Chhattisgarh for a maximum period of two years from the appointed day or till such period as is decided by mutual agreement between the successor States; as a joint body or to abolish it or on the expiry of that period for either of the successor States or to constitute separate commissions, authorities, tribunals, universities, boards or any other body, as the case may be, for the State of Chhattisgarh. In terms of Section 74 of the said Act, a decision was taken by the State of Madhya Pradesh as well as the State of Chhattisgarh to abolish the State Administrative Tribunal. A notification was issued on 25.7.2001 by the State of Madhya Pradesh by which the existing Madhya Pradesh State Administrative Tribunal had been abolished.

30. The Supreme Court, in that case, upheld the constitutional validity of Section 74 of the said Act and it was held by the Apex Court that abolition of the functioning of the Tribunal is legally valid.

31. In the case on hand, there is no similar provision like Section 74 of M.P. Act, 2000. Therefore, this judgment does not lend any assistance to decide the issue involved herein.

32. According to us, it depends upon the character of the notification in order to hold the same is 'law'. We are of the view in order to hold a particular notification being law, two conditions must be fulfilled – firstly, it must be issued in exercise of sovereign function under law, secondly, it is of public character not of private individual character. In other words, the notification will have an impact either adversely or beneficially on the public at large, not an individual or a group of individuals. The notification in this case was issued for creation of the tribunal before bifurcation of the undivided

Andhra Pradesh and it is of a public character and not of a private character.

33. In the case on hand, the notification was issued for constitution of a tribunal under the Administrative Tribunals Act, 1985 in exercise of sovereign power under the Act itself. Hence, it is of statutory character.

34. The other submission of the learned counsel for the petitioners, in our view, and the decisions cited in support of their submissions, which are large in number, do not require any consideration as we feel the same are irrelevant.

35. We therefore hold while repeating that this tribunal will continue to function for both the States till a decision is taken by both the States otherwise as provided under Section 101 of Act, 2014. The issues relating to the merits of the writ petitions with regard to the service conditions are therefore left undecided by us and we allow the writ petitioners and each of them to approach the tribunal as usual, as if it has not ceased to function.

36. The Writ Petitions are accordingly disposed of. There will be no order as to costs.

Consequently, pending miscellaneous petitions, if any, shall also stand closed.

Kalyan Jyoti Sengupta, CJ

Sanjay Kumar, J

Dt. 13.03.2015

Note: L.R. copy to be marked.

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[\[1\]](#) AIR 1997 SC 1125

[\[2\]](#) (2014) 8 SCC 470

[\[3\]](#) (2004) 11 SCC 766

[\[4\]](#) (2013) 11 SCC 451

- [\[5\]](#) AIR 1972 SC 2379
- [\[6\]](#) AIR 1988 SC 1531 (1)
- [\[7\]](#) AIR 1977 SC 2328
- [\[8\]](#) (2014) 3 SCC 92
- [\[9\]](#) (2014) 8 SCC 469
- [\[10\]](#) AIR 1982 SC 149
- [\[11\]](#) AIR 1974 SC 1755 = (1974) 4 SCC 335
- [\[12\]](#) AIR 1964 SC 1458
- [\[13\]](#) AIR 1964 SC 648
- [\[14\]](#) AIR 1999 SC 114
- [\[15\]](#) (1969) 2 W.L.R. 163
- [\[16\]](#) (2004) 6 SCC 689