

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO.565/2016

Tantrashikshan Magasvargiya Rajpatrit Shikshak Wa Prashashakiya Seva
 Kalyankari Association, Amravati through its President ..vs.. Government of
 Maharashtra, through its Chief Secretary, State Secretariat, Mumbai and others

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

Mr. T. Rahul with Mr. N. Meshram, Advocates for petitioner.
 Mrs. Bharti Dangre, Government Pleader for respondent nos. 1 to 3.
 Mr. A. R. Patil, Advocate for respondent nos. 6 to 8 and 9 to 11.

CORAM : B. R. GAVAI & V. M. DESHPANDE, JJ.

DATE : SEPTEMBER 7, 2016

Heard.

The petitioner has approached this Court praying for a declaration that frequent recourse to proviso to Article 309 of the Constitution of India by the Hon'ble Governor in the instant case is contrary to the Constitutional scheme and therefore improper and invalid.

The petitioner association, in effect, prays for declaring the *Principal, Head of Department, Lecturer and Workshop Superintendent in Government Polytechnics and Equivalent Institutes (Recruitment) Rules, 2012* to be Constitutionally invalid and ultra vires the Constitution and striking it down.

It will be appropriate to refer to Section 15 (1) of the Administrative Tribunals Act, 1995, which reads thus:

“15. Jurisdiction, powers and authority of State Administrative Tribunals.-(1) Save as otherwise expressly provided in this act, the Administrative

Tribunal for a State shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all Courts (except the Supreme Court) in relation to-

(a) recruitment and matters concerning recruitment, to any civil service of the State or to any civil post under the State;”

It can, thus, be seen that from the appointed date, the Administrative Tribunal will have all the jurisdiction, powers and authority exercisable immediately before that date by all Courts except the Supreme Court in relation to the recruitment and matters concerning the recruitment in civil services of the State or any civil post under the State.

Undisputedly, prior to the coming into force of the said Act, all such matters were dealt with by the High Court. The Apex Court, in the case of **L. Chandrakumar .vs.. Union of India and ors.; (1997) 3 SCC 261**, has considered the question of validity of the Administrative Tribunals Act. It will be appropriate to refer to the observations of Their Lordship in paragraph 93.

“93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional setup, been specifically entrusted with such an

obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the concerned High Court may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.”

It could clearly be seen that by Their Lordships of

the Supreme Court held that it is the Tribunal which shall continue to act as the only court of first instance in respect of the areas of law for which they have been constituted. It is further held that it will not be open for the litigants to directly approach the High Court even in cases where they question the vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.

Undisputedly, the present case clearly falls in sub clause (a) of Clause (1) of Section 15 of the Administrative Tribunals Act.

In that view of the matter, even challenge to a Regulation at the first instance cannot be entertained by this Court directly and if we do so, we will be acting contrary to the mandate given by the Constitutional Bench in the case of L. Chandrakumar (supra).

We, therefore, find that the petition directly filed before this Court is not tenable. Apart from that, we have serious doubt as to whether an association would be in a position to challenge validity of the Rules.

In view of above, the writ petition is dismissed.
No order as to costs.

JUDGE

JUDGE

CERTIFICATE

I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order.

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