

2

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CONT.CAS.(CRL.) 4/2019

COURT ON ITS OWN MOTION

..... Petitioner

Through: Mr. Dayan Krishnan, Senior Advocate
as Amicus Curiae with Ms. Manvi
Priya and Mr. Sajeevi Seshadri,
Advocates.

versus

RE: MEHMOOD PRACHA ADVOCATE Respondent

Through: Mr. Rudro Chatterjee, Advocate with
Mr. R.H.A. Sikander, Mr. Prateek
Gupta, Advocates for respondent with
respondent in person.

%

Date of Decision: 30th May, 2019

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

J U D G M E N T

MANMOHAN, J: (Oral)

1. The present contempt case has been registered on the basis of reference dated 5th April 2019, received by the Registrar General of this Court from the Principal Registrar, Central Administrative Tribunal (hereinafter referred to as C.A.T.), extracting inter alia the order dated 29th March, 2019 passed by the Principal Bench, C.A.T., New Delhi in O.A. 100/2413/2016 in the case of *Sanjeev Chaturvedi Vs. Cabinet Secretariat*

and Others, which is reproduced hereinbelow:-

“On 08.02.2019, a detailed order was passed in this batch of PTs referring to various developments. In para 11 of the order, the gist of developments that had taken place in open court was also mentioned, and a show cause notice was issued to Shri Mehmood Pracha, learned counsel for the petitioner to explain as to why contempt proceedings for the acts on his part be not initiated. On the next date of hearing, i.e. 22.02.2019, time was sought to file reply and it was granted. As of now, no explanation is filed by learned counsel for the petitioner. On the other hand, an application is filed by the petitioner in the PTs, with a prayer to correct the order dated 08.02.2019.

It is felt that having regard to various developments that have taken place, it is no longer feasible for this Tribunal to deal with the contempt case. On the other hand, it is felt appropriate to place the matter before the Hon'ble Chief Justice of Delhi High Court to take appropriate steps as are warranted in law.

The Registry is directed to forward the matter to the Registrar General of Delhi High Court to place it before the Hon'ble Chief Justice for taking necessary steps under the relevant provisions of the Constitution of India and the Contempt of Courts Act.”.

(emphasis supplied)

2. Enclosed with the aforesaid letter dated 5th April, 2019 are copies of earlier orders dated 8th February, 2019 and 22nd February, 2019 passed by the C.A.T. in the aforesaid petition. Vide order dated 8th February, 2019, notice to show cause was issued by the C.A.T. to the respondent herein, calling upon him to explain as to why contempt proceedings be not initiated against him.

3. By the subsequent letter dated 5th April, 2019, the C.A.T. had directed that the matter be placed before this Court for taking appropriate steps under the relevant provisions of the Constitution of India and the

Contempt of Courts Act, 1971.

4. Learned predecessor bench had issued notice in the present matter and appointed Mr. Dayan Krishnan, Senior Advocate as an Amicus Curiae to assist the Court.

5. Learned Amicus Curiae submits that before proceeding with the present matter, this Court should consider the issue of maintainability of the present criminal contempt reference. He submits that the C.A.T. has the jurisdiction to deal with its contempt including in facie contempt as alleged in the present case. He submits that the C.A.T., in fact has the same powers as the High Court in this respect.

6. In support of his submission, he relies upon ***T. Sudhakar Prasad v. Govt. of AP, (2001) 1 SCC 516***, wherein the Supreme Court has held in categorical terms, that Section 17 of the Administrative Tribunals Act, 1985 confers jurisdiction on the C.A.T. to punish for its contempt.

7. Learned Amicus Curiae also states that as a matter of practice, the C.A.T. routinely entertains contempt proceedings. In support of his contention, he makes a reference to orders of the Principal Bench of C.A.T. in ***S.K. Srivastava Vs. B.K. Jha, Cr. P.C. No. 834/2011 in OA 2600/2011*** and ***In Re : Court on its own motion, Suo Motu Contempt Petition No. 123/2018***.

8. Having heard learned Amicus Curiae, this Court finds that Article 323A(2)(b) of the Constitution provides that an administrative tribunal constituted under sub-clause (1) of Article 323A would be empowered to punish for its contempt if the statute establishing it so provides. The relevant portion of Article 323A(2) of the Constitution is reproduced hereinbelow:-

“323A. Administrative tribunals.—Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.

(2) A law made under clause (1) may—

(b) *xxx specify the jurisdiction, powers (including the power to punish for contempt) and authority which may be exercised by each of the said tribunals;*

(g) *xxx contain such supplemental, incidental and consequential provisions (including provisions as to fees) as Parliament may deem necessary for the effective functioning of, and for the speedy disposal of cases by, and the enforcement of the orders, such tribunals.*

(emphasis supplied)

9. Further, Section 17 of the Administrative Tribunals Act, 1985 specifically provides that the C.A.T. shall have, and exercise, the same jurisdiction, powers and authority in respect of its contempt as a High Court has and may exercise the provisions of the Contempt of Courts Act, 1971. The relevant portion of Section 17 of the Administrative Tribunals Act, 1985, is reproduced hereinbelow:-

“17. Power to punish for contempt.—A Tribunal shall have, and exercise, the same jurisdiction, powers and authority in respect of contempt of itself as a High Court has and may exercise and, for this purpose, the provisions of the Contempt of Courts Act, 1971 (70 of 1971) shall have effect subject to the modifications that—

(a) The references therein to a High Court shall be construed as including a reference to such Tribunal....”

(emphasis supplied)

10. The C.A.T. has also framed the Contempt of Courts (C.A.T.) Rules, 1992, which provide the procedure for initiation of criminal contempt & *suo motu* contempt proceedings, respectively. Rule 7 of the Contempt of Courts (C.A.T.) Rules, 1992 is reproduced herienbelow:-

“7. Initiation of proceedings.—(i) Every petition for “Civil Contempt” made in accordance with these rules shall be scrutinised by the Registrar, registered and numbered in the Registry and then placed before the Bench for preliminary hearing.

(ii) Every petition for “Criminal Contempt” made in accordance with these rules and every information other than a petition, for initiating action for criminal contempt under the Act on being scrutinised by the Registrar shall first be placed on the administrative side before the Chairman in the case of Principal Bench and the concerned Vice-Chairman in the case of other Benches or such other Member as may be designated by him for this purpose and he considers it expedient and proper to take action under the Act, the said petition or information shall be registered and numbered in the Registry and placed before the Bench for preliminary hearing.

(iii) When suo motu action is taken the statement of facts constituting the alleged contempt and copy of the draft charges shall be prepared and signed by the Registrar before placing them for preliminary hearing.”

(emphasis supplied)

11. In the opinion of this Court, the learned Amicus has rightly submitted that the Supreme Court in ***T. Sudhakar Prasad*** (supra) has held that the contempt jurisdiction is exclusively exercisable by the Tribunal. The relevant portion of the judgment in ***T. Sudhakar Prasad*** (supra) is

reproduced hereinbelow:-

“Administrative Tribunals set up under the provisions of the Administrative Tribunals Act, 1985, do they or do they not have power to punish for their contempt? Whether after the decision of this Court in L. Chandra Kumar v. Union of India [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] Section 17 of the Administrative Tribunals Act, 1985 (hereinafter “the Act” for short) does not survive and has been rendered unconstitutional or otiose? These questions of far-reaching implications to the administration of justice through Tribunals arise for consideration in these appeals.

xxxx

xxxx

xxxx

xxxx

17. It is thus clear that the Constitution Bench has not declared the provisions of Article 323-A(2)(b) or Article 323-B(3)(d) or Section 17 of the Act ultra vires the Constitution. The High Court has, in its judgment under appeal, noted with emphasis the Tribunal having been compared to like “courts of first instance” and then proceeded to hold that the status of Administrative Tribunals having been held to be equivalent to courts or Tribunals subordinate to the High Court the jurisdiction to hear their own contempt was lost by the Administrative Tribunals and the only course available to them was either to make a reference to the High Court or to file a complaint under Sections 193, 219 and 228 IPC as provided by Section 30 of the Act. The High Court has proceeded on the reasoning that the Tribunal having been held to be subordinate to the High Court for the purpose of Articles 226/227 of the Constitution and its decisions having been subjected to judicial review jurisdiction of the High Court under Articles 226/227 of the Constitution, the right to file an appeal to the Supreme Court against an order passed by the Tribunal punishing for contempt under Section 17 of the Act was defeated and on these twin grounds Section 17 of the Act became unworkable and unconstitutional. We do not find any basis for such conclusion or inference being drawn from the judgments of this Court in the cases of Supreme Court Bar Assn. [(1998) 4 SCC 409] or L. Chandra Kumar[(1997) 3 SCC 261 : 1997 SCC (L&S) 577] or any other decision of this Court. The Constitution

Bench has in so many words said that the jurisdiction conferred on the High Courts under Articles 226/227 could not be taken away by conferring the same on any court or Tribunal and jurisdiction hitherto exercised by the High Court now legislatively conferred on Tribunals to the exclusion of the High Court on specified matters, did not amount to assigning Tribunals a status of substitute for the High Court but such jurisdiction was capable of being conferred additionally or supplementally on any court or Tribunal which is not a concept strange to the scheme of the Constitution more so in view of Articles 323-A and 323-B. Clause (2)(b) of Article 323-A specifically empowers Parliament to enact a law specifying the jurisdiction and powers, including the power to punish for contempt, being conferred on the Administrative Tribunals constituted under Article 323-A. Section 17 of the Act derives its legislative sanctity therefrom. The power of the High Court to punish for contempt of itself under Article 215 of the Constitution remains intact but the jurisdiction, power and authority to hear and decide the matters covered by sub-section (1) of Section 14 of the Act having been conferred on the Administrative Tribunals the jurisdiction of the High Court to that extent has been taken away and hence the same jurisdiction which vested in the High Court to punish for contempt of itself in the matters now falling within the jurisdiction of Tribunals if those matters would have continued to be heard by the High Court has now been conferred on the Administrative Tribunals under Section 17 of the Act. The jurisdiction is the same as vesting in the High Courts under Article 215 of the Constitution read with the provisions of the Contempt of Courts Act, 1971. The need for enacting Section 17 arose, firstly, to avoid doubts, and secondly, because the Tribunals are not "courts of record". While holding the proceedings under Section 17 of the Act the Tribunal remains a Tribunal and so would be amenable to the jurisdiction of the High Court under Articles 226/227 of the Constitution subject to the well-established rules of self-restraint governing the discretion of the High Court to interfere with the pending proceedings and upset the interim or interlocutory orders of the Tribunals. However any order or decision of the Tribunal punishing for contempt shall be appealable only to the

Supreme Court within 60 days from the date of the order appealed against in view of the specific provision contained in Section 19 of the Contempt of Courts Act, 1971 read with Section 17 of the Administrative Tribunals Act, 1985. Section 17 of the Administrative Tribunals Act is a piece of legislation by reference. The provisions of the Contempt of Courts Act are not as if lifted and incorporated in the text of the Administrative Tribunals Act (as is in the case of legislation by incorporation); they remain there where they are, yet while reading the provisions of the Contempt of Courts Act in the context of Tribunals, the same will be so read as to read the word “Tribunal” in place of the word “High Court” wherever it occurs, subject to the modifications set out in Section 17 of the Administrative Tribunals Act. Section 19 of the Contempt of Courts Act, 1971 provides for appeals. In its text also by virtue of Section 17 of the Administrative Tribunals Act, 1985 the word “High Court” shall be read as “Tribunal”. Here, by way of abundant caution, we make it clear that the concept of intra-Tribunal appeals i.e. appeal from an order or decision of a Member of a Tribunal sitting singly to a Bench of not less than two Members of the Tribunal is alien to the Administrative Tribunals Act, 1985. The question of any order made under the provisions of the Contempt of Courts Act, 1971 by a Member of the Tribunal sitting singly, if the rules of business framed by the Tribunal or the appropriate Government permit such hearing, being subjected to an appeal before a Bench of two or more Members of the Tribunal therefore does not arise. Any order or decision of the Tribunal punishing for contempt is appealable under Section 19 of the Act to the Supreme Court only. The Supreme Court in the case of L. Chandra Kumar [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] has nowhere said that orders of the Tribunal holding the contemner guilty and punishing for contempt shall also be subject to judicial scrutiny of the High Court under Articles 226/227 of the Constitution in spite of remedy of statutory appeal provided by Section 19 of the Contempt of Courts Act being available. The distinction between orders passed by the Administrative Tribunal on matters covered by Section 14(1) of the Administrative Tribunals Act and orders

punishing for contempt under Section 19 of the Contempt of Courts Act read with Section 17 of the Administrative Tribunals Act, is this: as against the former there is no remedy of appeal statutorily provided, but as against the latter statutory remedy of appeal is provided by Section 19 of the Contempt of Courts Act itself.

xxxx

xxxx

xxxx

xxxx

19. Jurisdiction should not be confused with status and subordination. Parliament was motivated to create new adjudicatory fora to provide new, cheap and fast-track adjudicatory systems and permitting them to function by tearing off the conventional shackles of the strict rule of pleadings, strict rule of evidence, tardy trials, three/four-tier appeals, endless revisions and reviews — creating hurdles in the fast flow of the stream of justice. The Administrative Tribunals as established under Article 323-A and the Administrative Tribunals Act, 1985 are an alternative institutional mechanism or authority, designed to be not less effective than the High Court, consistently with the amended constitutional scheme but at the same time not to negate judicial review jurisdiction of constitutional courts. Transfer of jurisdiction in specified matters from the High Court to the Administrative Tribunal equates the Tribunal with the High Court insofar as the exercise of judicial authority over the specified matters is concerned. That, however, does not assign the Administrative Tribunals a status equivalent to that of the High Court nor does that mean that for the purpose of judicial review or judicial superintendence they cannot be subordinate to the High Court. It has to be remembered that what has been conferred on the Administrative Tribunal is not only jurisdiction of the High Court but also of the subordinate courts as to specified matters. The High Courts are creatures of the Constitution and their Judges hold constitutional office having been appointed under the Constitution. The Tribunals are creatures of statute and their Members are statutorily appointed and hold statutory office. In State of Orissa v. Bhagaban Sarangi [(1995) 1 SCC 399 : 1995 SCC (L&S) 320 : (1995) 29 ATC 119] it was held that the Administrative Tribunal is

nonetheless a Tribunal and so it is bound by the decision of the High Court of the State and cannot sidetrack or bypass it. Certain observations made in the case of T.N. Seshan, Chief Election Commr. of India v. Union of India [(1995) 4 SCC 611] may usefully be referred to. It was held that merely because some of the service conditions of the Chief Election Commissioner are akin to those of the Supreme Court Judges, that does not confer the status of a Supreme Court Judge on the CEC. This Court observed: (SCC Headnote)

“Of late it is found that even personnel belonging to other fora claim equation with High Court and Supreme Court Judges merely because certain jurisdictions earlier exercised by those Courts are transferred to them not realising the distinction between constitutional and statutory functionaries.”

We are therefore clearly of the opinion that there is no anathema to the Tribunal exercising jurisdiction of the High Court and in that sense being supplemental or additional to the High Court but at the same time not enjoying status equivalent to the High Court and also being subject to judicial review and judicial superintendence of the High Court.

xxxx

xxxx

xxxx

xxxx

22. Contempt jurisdiction is exercised for the purpose of upholding the majesty of law and dignity of the judicial system as also of the courts and Tribunals entrusted with the task of administering delivery of justice. Power of contempt has often been invoked, as a step in that direction, for enforcing compliance with orders of courts and punishing for lapses in the matter of compliance. The majesty of judicial institution is to be ensured so that it may not be lowered and the functional utility of the constitutional edifice is preserved from being rendered ineffective. The proceedings for contempt of court cannot be used merely for executing the decree of the court. However, with a view to preserving the flow of the stream of justice in its unsullied form and in unstinted purity wilful defiance with the mandate of the court is treated to be contemptuous. Availability of

jurisdiction to punish for contempt provides efficacy to functioning of the judicial forum and enables the enforcement of the orders on account of its deterrent effect on avoidance. Viewed from this angle the validity of Section 17 of the Act is protected not only by sub-clause (b) of clause (2) of Article 323-A but also by sub-clause (g) thereof.”

(emphasis supplied)

12. The aforesaid judgment has been followed by the Supreme Court in ***R. Mohajan v. Shefali Sengupta* (2012) 4 SCC 761** in respect of contempt powers of the C.A.T. where the issue being considered related to maintainability of an appeal against an order of the Tribunal passed in exercise of its contempt jurisdiction. The relevant portion of ***R. Mohajan v. Shefali Sengupta*** (supra) is reproduced hereinbelow:-

“16. This aspect has been considered by the subsequent three-Judge Bench decision of this Court in *T. Sudhakar Prasad* [(2001) 1 SCC 516 : 2001 SCC (L&S) 263]. The question posed before the Court was that whether the Administrative Tribunals set up under the provisions of the Administrative Tribunals Act, 1985: do they or do they not have power to punish for their contempt?

17. After going into the decision in *L. Chandra Kumar* [(1997) 3 SCC 261 : 1997 SCC (L&S) 577] in detail, this Court has concluded as under: (*T. Sudhakar Prasad* case [(2001) 1 SCC 516 : 2001 SCC (L&S) 263], SCC pp. 529-31, para 17)

“17. It is thus clear that.....”

18. In view of the clarification by the three-Judge Bench of this Court in *T. Sudhakar Prasad* [(2001) 1 SCC 516 : 2001 SCC (L&S) 263], we reject the objection as to the maintainability of the present appeal and hold the same as maintainable.”

(emphasis supplied)

13. Consequently, this court is of the view that it does not have the jurisdiction to entertain the present criminal contempt reference received

from the C.A.T., particularly after the judgment of the Supreme Court in *T. Sudhakar Prasad* (supra). This Court is further of the opinion that Section 15(2) of the Contempt of Courts Act, 1971 has no application in the context of contempt of C.A.T.

14. Accordingly, the present reference is remitted back to the C.A.T. as it has the exclusive jurisdiction to entertain criminal contempt proceedings in the first instance, under Section 17 of the Administrative Tribunals Act, 1985.

15. Before parting with this case, the Court places on record its appreciation for the assistance rendered by Mr. Dayan Krishnan, learned Amicus Curiae as well as Ms. Manvi Priya and Mr. Narender Mann, Advocates.

MANMOHAN, J

SANGITA DHINGRA SEHGAL, J

MAY 30, 2019

rn