

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Hiranmay Bhattacharyya

WPA 6954 of 2020

Pradip Dasthakur

Vs.

The State of West Bengal and Ors.

For the petitioners : Mr. Soumen Kumar Dutta
Mr. Sourav Dutta

For the Respondents : Mr. Joytosh Majumder,
.....Ld. Govt, Pleader
Mr. Biswabrata Basu Mallick
Mr. Rajat DuttaFor the state

Mr. Sirsanya Bandopadhaya
.....For the learned Advocate General
Mr. N. Chatterjee
.... for the respondent nos. 3 & 4
Mr. Amitava Chaudhuri
Mr. Nirmalya Roy
...for the respondent nos. 7 & 8

Heard on : 21.09.2020

Judgment on : 25.09.2020

Hiranmay Bhattacharyya, J.:

The writ petitioner has challenged the vires of the Recruitment Rules relating to West Bengal Junior Fishery Service (Grade II) which came into force vide notification dated September 24, 2015.

The Learned Government Pleader has raised a preliminary objection with regard to the maintainability of the instant writ petition. He submitted that the subject matter of challenge in the instant writ petition is the vires of the rule regulating the recruitment to various posts under the Fisheries Department, Government of West Bengal. He further submitted that the Administrative Tribunal Act, 1985 conferred jurisdiction upon the Administrative Tribunal for the State to decide such dispute. He submitted that the Tribunal acts like the court of first instance and the writ petitioner cannot approach the High Court directly in the instant case. In support of his submission, the learned Government Pleader relies upon the judgment of the Hon'ble Supreme Court of India in the case of L. Chandra Kumar versus Union of India and ors reported at (1997) 3 SCC 261.

Per contra, Mr. Soumen Kumar Dutta, learned advocate for the writ petitioner submitted that the Rule, the vires of which has been challenged in the instant writ petition, has been framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. The Tribunal constituted under Article 323A of the Constitution of India lacks jurisdiction to entertain and

decide the matters where the vires of such statutory rules are challenged. He further submitted that Article 323A of the Constitution of India, is silent as to whether the vires of a rule framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India can be entertained. He further submitted that the Administrative Tribunals Act, 1985 also does not confer jurisdiction upon the Administrative Tribunal to entertain and try matters where the vires of a statutory rule is questioned. He submitted that the decision in L. Chandra Kumar (Supra) does not decide the issue as to whether the challenge to the vires of the statutory rule can be entertained and decided by the Administrative Tribunal. As such, according to him, the said decision relied upon by the learned Government Pleader is not applicable in the instant case.

The Learned Advocates appearing on behalf of the other respondents have adopted the argument of the Learned Government Pleader on the point of maintainability of the writ petition.

I have heard the learned advocates appearing for the respective parties on the question of maintainability of the instant writ petition and have considered the materials on record only for the purpose of deciding the said issue.

It is not in dispute that the Recruitment Rules relating to West Bengal Junior Fishery Service Grade II, which came into force

vide notification dated September 24, 2015, was framed in exercise of the power conferred by the proviso to Article 309 of the Constitution of India.

One of the questions of law which fell for consideration before the Hon'ble Supreme Court of India in L. Chandra Kumar (supra) was whether the Tribunals constituted under Article 323A of the Constitution of India, possess the competence to test the constitutional validity of a statutory provision / rule.

The Hon'ble Supreme Court after interpreting various Articles including Article 323A of the Constitution of India as well as the various provisions of the Administrative Tribunals Act, 1985 held that the tribunals are competent to hear matters where the vires of statutory provisions are questioned. It was further held therein that the tribunals will also have the power to test the vires of subordinate legislations and rules. The only exception carved out is in respect of matters where the vires of the legislation which creates the particular tribunal is challenged when the High Court concerned may be approached directly. It was further held therein that the Tribunals will continue to act like courts of first instance in respect of the areas of law for which they have been constituted. All the decisions of the Tribunal will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Hon'ble Supreme Court in paragraph 90 and 93 of the said reports held as -

“90.It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Article 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.

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 set-up, 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 High Court concerned 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 Tribunal concerned. ”

The subject matter of challenge in the instant writ petition do not fall within the exception carved out by the Hon’ble Supreme Court in L. Chandra Kumar (supra). The Hon’ble Supreme Court of India after considering the various provisions of the Constitution of India including Article 323A and the Administrative Tribunals Act, 1985 held that the tribunals are competent to hear matters where vires of statutory provisions are questioned. As such the submission of the learned advocate for the petitioner that the vires of the statutory rule framed under Article 309 of the Constitution of India cannot be challenged before the tribunal as the Administrative Tribunals Act, 1985 and Article 323A of the Constitution of India are silent in this regard cannot be accepted.

Thus, in view of the law settled by the Hon’ble Supreme Court of India in the case of L. Chandra Kumar (supra) this court holds that the State Administrative Tribunal is competent to entertain and decide matters where the vires of the Recruitment Rules relating to West Bengal Junior Fishery Service Grade II framed in exercise of the power conferred by the proviso to Article 309 of the Constitution of India is questioned. I further hold that the petitioner ought to have approached the Tribunal in the instant case which acts as the only court of first instance. It is not open to the writ

petitioner to approach the High Court directly bypassing the Tribunal which has been constituted for entertaining and deciding the questions involved herein.

For the reason as aforesaid I hold that the instant writ petition challenging the vires of the said recruitment rules is not maintainable. The writ petition is thus dismissed on the point of maintainability. However, the dismissal of the instant writ petition shall not preclude the writ petitioner from approaching the proper forum for appropriate reliefs in accordance with law on the self same cause of action, if so advised.

WPA No. 6954 of 2020 is dismissed without, however, any order as to costs.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

(Hiranmay Bhattacharyya, J.)