

05.02.2021
Ct. No.13
Sl. No.22
akd

W.P.A. 10421 of 2020 [via video conference]

[Sambhu Mistri -Vs- Union of India & Ors.]

Mr. Indranil Chakravorty
Mr. Suryasarathi Basu
... .. for the petitioner

Mr. Nilanjan Bhattacharjee
Mr. Shirshendu Chowdhury
Mr. Aniruddha Karmakar
... .. for the respondent no.6

The writ petitioner alleges discrimination against the Prasar Bharati in denying him promotion. The petitioner is serving as a Helper in Doordarshan Kendra, Kolkata.

Learned counsel for the respondent no.6 raised a preliminary objection of maintainability of the writ application before this court. It is stated that the writ petitioner's cause of action, if any, should have been agitated before the Central Administrative Tribunal since the petitioner is a permanent employee holding a civil post under Article 309 and 311 of the Constitution of India. He submits by reference to Section 14(1)(c) of the Administrative Tribunals Act, 1985 in this regard which is set out hereinbelow:-

"S.14(1)(c). all service matter pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment."

Emphasis added.

He further relies upon two decisions of the Hon'ble Supreme Court firstly in the case of ***Union of India vs. M. A.***

Chowdhary reported in **(1987) 4 SCC 112** particularly the order portion under paragraph 5 which is set out hereinbelow:-

“Shri A.K. Ganguli, learned counsel for the Union of India submits that Article 311 of the Constitution is applicable to the Staff Artists of the All India Radio. We are of the view that the statement made on behalf of the government represents the true legal position because the Staff Artists are holding civil posts under the government. In view of the above statements, this appeal filed against the judgment of the High Court of Allahabad in Special Appeal No.258 of 1974 which has also taken the view that Article 311 is applicable to those Staff Artists has to be dismissed. This appeal is accordingly dismissed. No costs.”

The said decision was reiterated by the Hon’ble Supreme Court in the case of **Y. K. Mehta & Ors. vs. Union of India & Anr.** reported in **1988 (Supp) SCC 750** at paragraph 7.

Learned counsel for the respondent no.6 also refers to an order of the Central Administrative Tribunal dated 29.09.1993 passed in O.A. 1089 of 1993 filed by the petitioner against the Union where the issue of promotion which is some part of the subject matter of the instant application was dealt with. He next relies upon the writ petition itself where the respondent nos.3 to 7 have been arrayed as Parsar Bharati India’s Public Service Broadcaster, Unit – Doordarshan and other officials of the respondent have been impleaded. He submits that Prasar Bharati is listed at No. 185, at Appendix VI of Rule 154 (b) of the CAT Rules of Practice, 1993, and hence the cause of action of the writ petitioner should be agitated before the Central Administrative Tribunal and this Court cannot entertain the instant writ application.

Learned counsel for the petitioner in answer to demurrer question would argue that by reason of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990 implemented from

1997 and particularly Section 3(2) thereof, the Prasar Bharati has since been rechristened as a body corporate with perpetual succession and a common seal and can be sued and can also sue in its name. He further submits that when O.A. 1089 of 1993 was filed, the 1990 Act was not brought into force. He also submits thereafter that a large number of writ applications have been entertained by this court regarding service grievance of employees of the Prasar Bharati Corporation Limited/Prasar Bharati.

Having heard the parties at length this Court is reminded of paragraph 99 of the decision of the Hon'ble Supreme Court in the case of ***L. Chandra Kumar vs. Union of India & Ors.*** reported in ***AIR 1997 SC 1125***. The aforesaid paragraph 99 is set out hereinbelow:-

“99. In view of the reasoning adopted by us, we hold that Clause 2(d) of Article 323A and Clause 3(d) of Article 323B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the “exclusion of jurisdiction” clauses in all other legislations enacted under the aegis of Articles 323A and 323B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other Courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls. The Tribunal will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislation (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.”

This Court also notices that the last list referred to by the respondent no.6 that under Rule 154(b), Appendix-VI of the Central Administrative Tribunal Rules of Practice, 1993 against item no.185, the expression '*Prasar Bharati, M/o Information and Broadcasting,*' is mentioned.

The writ petitioner has not impleaded Prasar Bharati Corporation Limited as a party respondent anywhere in the writ application. The Corporation or Prasar Bharati has not been described in the writ application.

In terms of sub-section (5) of Section 3 of the 1990 Act the Prasar Bharati Board which has general superintendence and manages the affairs of the Corporation comprises in:-

- “ (a) a Chairman;
- (b) one Executive Member;
- (c) one Member (Finance);
- (d) one Member (Personnel);
- (e) six part-time Members;
- (f) Director-General (Akashvani), ex-officio;
- (g) Director-General (Doordarshan), ex-officio;
- (h) one representative of the Union Ministry of Information and Broadcasting, to be nominated by the Ministry; and
- (i) two representatives of the employees of the Corporation of whom one shall be elected by the engineering staff from amongst themselves and one shall be elected by the other employees from amongst themselves.

Section 4 of the 1990 Act prescribes that the Chairman and other members except ex-officio members and nominated and elected members shall be appointed by the President of India on the recommendation of a Committee comprising of the Chairman of the Rajya Sabha, Chairman of the Press Council of India and a nominee of the President of India.

Taking a comprehensive view of the observations of the Hon'ble Supreme court in the aforesaid two decisions ***M. A. Chowdhary (supra)*** and ***Y. K. Mehta & Ors. (supra)*** the decision of the ***L. Chandra Kumar (supra)*** and the constitution

of the Prasar Bharati Board under the 1990 Act, as aforesaid, this Court is of the view that the Prasar Bharati Corporation Limited is wholly owned and controlled by the Central Government and the incorporation as a body corporate is merely a Administrative/ business convenience of the Central Government.

The only argument that may weigh in favour of the writ petitioner to attract the jurisdiction of this court under Article 226 of the Constitution of India is the expression '*incorporated as body corporate*' used in Section 3 of the 1990 Act. However, considering the decisions of the Hon'ble Supreme Court albeit rendered prior to the coming into force of the 1990 Act and Article 309 of the Constitution of India read with Section 14(c) of the Administrative Tribunals Act, 1985, this Court is of the view that the petitioner's cause of action must and should only be agitated before the Central Administrative Tribunal. The expression '*or any local or other authority or any corporation*', in Section 14 (1) (c) of the 1985 Act, must be given due weightage and cannot be ignored.

Reliance in this regard is also placed by the learned counsel for the respondent no.6 on a Single Bench decision of the Manipur High Court in ***Shri H. P. Meena & Ors. vs. Union of India & Ors.*** reported in ***2014 SCC OnLine Mani 81*** particularly paragraphs 7 & 8 thereof. The views of Manipur High Court in the said decision are approved and applied in the instant case.

The writ application is therefore rejected on the ground of maintainability.

It is made clear that this Court has not in any way entered into the merits of the claims of the petitioner and they may agitated before the Central Administrative Tribunal.

There shall be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Rajasekhar Mantha, J.)