

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 8th March, 2021.**

+ **LPA 348/2020 CM APPL. 29464/2020 (for interim relief) & CM APPL. 29466/2020 (for taking additional documents on record).**

RAJENDRA PRASAD SHARMA **Appellant**

Through: Mr. Tanveer Ahamad, Mr. Prateek Gupta and Mr. Vishal Singh, Advs.

versus

UNION PUBLIC SERVICE COMMISSION & ORS.

....**Respondents**

Through: Mr. Naresh Kaushik, Adv. for UPCC.

Mr. Arun Bhardwaj, Adv. for UOI.
Dr. Manish Singhvi, Sr. Adv. with
Mr. D. K. Devesh, Adv. for R-3.
Mr. Shiv Mangal Sharma with Mr.
Kartikey Bhatt, Mr. Saurabh Rajpal,
Ms. Natasha Debroy and Ms. Sara
Chandra, Advs. for R-4
to R-23.

AND

+ **LPA 360/2020**

UNION PUBLIC SERVICE COMMISSION **Appellant**

Through: Mr. Naresh Kaushik, Adv.

versus

AKUL BHARGAVA AND ORS **Respondents**

Through: Mr. Arun Bhardwaj, Adv. for UOI.
Mr. Shiv Mangal Sharma with Mr.
Kartikey Bhatt, Mr. Saurabh Rajpal
Ms. Natasha Debroy and Ms. Sara
Chandra, Advs. for R-1
to R- 20.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE AMIT BANSAL

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. Both appeals impugn the order dated 9th October, 2020 in W.P.(C) No.3509/2020, deciding the question of maintainability of the writ petition and of this Court having territorial jurisdiction to entertain the writ petition.
2. The appeals were entertained and the hearing on merits of W.P.(C) No.3509/2020 before the Single Judge deferred till the decision of these appeals.
3. We have heard the counsel for the appellant Union Public Service Commission (UPSC), the senior counsel for the respondent State of Rajasthan, supporting the UPSC, the counsel for the interveners before the Single Judge and who have filed LPA No. 348/2020, the counsel for the Union of India (UOI), also supporting UPSC and the counsel for the original writ petitioners, opposing these appeals.
4. The writ petition, from which these appeals arise, was filed by 20 Non-State Civil Service (Non SCS) officers of the State of Rajasthan, who claim to be eligible for consideration for induction into Indian Administrative Services (IAS) and who had been called for interviews to be held at Delhi. They were aggrieved from the communication dated 31st December, 2019 of UPSC, of the interviews having been cancelled for the reason of Government of India (GOI) having failed to nominate two members on the interview panel. In the writ petition, the reliefs of (i) direction to the GOI to nominate two members for convening the Selection Committee meeting for the purpose of appointment of eligible candidates amongst the petitioners as IAS officers of Rajasthan cadre, for the year

2018; (ii) issuance of directions to UPSC to convene a meeting at the earliest and to intimate to the writ petitioners the revised schedule for interviews to be conducted by the said Selection Committee, for purposes of appointment of eligible candidates amongst the petitioners as IAS officers of Rajasthan cadre of 2018; and, (iii) quashing of the letter dated 31st December, 2019 issued by UPSC of cancellation of interviews, were sought.

5. UPSC, GOI as well as the State of Rajasthan raised objection as to the maintainability of the writ petition as well as on the grounds of territorial jurisdiction of this Court to entertain the writ petition. Application for intervention was also filed by the appellant in LPA No.348/2020, being an officer of Rajasthan State Civil Service/Rajasthan State Administrative Service (SCS), contending that vacancies in excess had been earmarked for Non SCS category, by 'carrying forward' and which 'carrying forward' was under challenge in O.A. NO.291/138/2020 filed by the said appellant before the Central Administrative Tribunal, Jaipur Bench, Jaipur and which was pending consideration.

6. Vide order dated 28th August, 2020 in LPA No.227/2020, also arising from the aforesaid writ petition and earlier preferred by the intervener, it was directed, that the Single Judge should decide the question of maintainability and territoriality as a preliminary issue.

7. In pursuance thereto, the Single Judge has held the writ petition to be maintainable and this Court to have territorial jurisdiction to entertain the writ petition.

8. The counsel for the UPSC and the senior counsel for the State of

Rajasthan have contended that CAT, established under the Administrative Tribunals Act, 1985, has the exclusive jurisdiction to entertain an application in relation to matters covered by Section 14 of the said Act and the jurisdiction of this Court under Article 226 of the Constitution of India is barred. Reliance in this regard is placed on para 94 of **L. Chandra Kumar Vs. Union of India** (1997) 3 SCC 261 as under:-

“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 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.”

(Emphasis added)

9. It is contended that from the use of the words ‘in such cases alone’ and ‘continue to act as the only courts of first instance’, it follows that the jurisdiction of this court is barred.

10. On enquiry, whether not it is the settled principle that the availability of an alternative remedy, in this case of approaching CAT, is not a absolute bar to exercise of jurisdiction under Article 226, attention is drawn to Article 323A(2)(d) of the Constitution of India to contend that Section 14 of the Administrative Tribunals Act is a law pursuant to the power derived from Article 323A of the Constitution, to exclude the jurisdiction of all courts except the jurisdiction of the Supreme Court under Article 136, with respect to the disputes or complaints referred to in Article 323A(1) of the Constitution.

11. Though the counsels have not referred to, but we may also refer to Article 323A(3) of the Constitution, which gives effect to provisions of Article 323A notwithstanding anything in any other provision of the Constitution or in any other law for the time being in force.

12. Reading Articles 323A(2)(d) and 323A(3) with Section 14 of the Administrative Tribunals Act, it indeed appears that the jurisdiction of this Court under Article 226 of the Constitution would be barred with respect to matters, jurisdiction in relation whereto is vested in CAT, constituted under the Administrative Tribunals Act.

13. We have however perused the reasoning given by the Single Judge, to hold to the contrary. We find the Single Judge to have relied upon ***TK Rangarajan Vs. Government of Tamil Nadu*** (2003) 6 SCC 581 holding that, (a) though in ***L. Chandra Kumar*** it was held that it will not be open to the employees to directly approach the High Court, however this ratio is required to be appreciated in the context of the question which was decided in ***L. Chandra Kumar***; (b) however if the High Court finds that the Administrative Tribunal would not be in a position to render justice to the cause, for exceptional circumstances which arose, there is no justifiable reason for the High Court to not entertain the writ petition on the ground of alternative remedy provided under the statute. The Single Judge also relied upon ***Satwati Deswal Vs. State of Haryana*** (2010) 1 SCC 126, also holding that the High Court, in that case, had fallen in an error in refusing to entertain the writ petition when there was a violation of principles of natural justice.

14. The counsel for the UPSC and the senior counsel for the State of Rajasthan, when asked whether not what they are arguing is contrary to ***TK Rangarajan*** and ***Satwati Deswal***, contend, that while ***L. Chandra Kumar*** supra is dicta of seven Hon'ble judges, ***TK Rangarajan*** supra and ***Satwati Deswal*** supra are judgments pronounced by Benches of two judges and it is the judgment of the larger Bench which would prevail.

15. We are unable to agree. It is not open to us to hold that a latter decision of bench of the Supreme Court of lesser strength is contrary to the earlier decision of a bench of a larger strength, especially when the latter notices the earlier judgment. We are bound by the latter judgment. It has

been held in *South Central Railway Employees Co-op Credit Society Employees Union Vs. B. Yashodabai* (2015) 2 SCC 727 that it is not open to the High Court to hold that any judgment of the Supreme Court is *per incuriam*. It is also not as if in *TK Rangarajan* and *Satwati Deswal* supra, *L. Chandra Kumar* was not noticed. After noticing *L. Chandra Kumar*, it was held that the same does not hold the jurisdiction of the High Court under Article 226 to be barred. We are bound by the said judgments of the Supreme Court and the appellant UPSC, before the Supreme Court only, can contend that the said judgments of benches of lesser strength, are contrary to *L. Chandra Kumar* supra of a larger Bench of Supreme Court.

16. No merit is thus found in the contention of the appellant UPSC supported by the State of Rajasthan, of there being a bar to the exercise of jurisdiction under Article 226 of the Constitution of India in relation to matters specified in Section 14 of the Administrative Tribunals Act.

17. Next, we have perused the reasoning given by the Single Judge for holding the writ petition to be maintainable, to gauge whether the Single Judge was/is justified in holding the writ petition to be maintainable notwithstanding availability of alternative remedy of approaching the CAT.

18. The Single Judge, in this regard has held that (i) notwithstanding constitution of CAT, jurisdiction under Article 226 of the Constitution has been exercised and/or is permitted to be exercised, (a) if there is a violation of principles of natural justice; or (b) if there are unprecedented or extraordinary circumstances that warrant exercise of jurisdiction under Article 226; or (c) if there is a need to render substantial justice; or (d) if the act complained of is patently erroneous or perverse; or (e) if there is a

demonstrable lack of jurisdiction or perversity; or (f) if relegating the parties to CAT would not render substantial justice; (ii) in the facts of the present case, Non SCS category officers had not been promoted to the IAS for the previous 3 to 4 years and there were repeated litigations before the CAT in this regard; (iii) repeated challenges were being made by SCS officers to the selection of Non SCS candidates, as was done by filing of OA No.291/138/2020 and in which also no effective proceedings were taking place; (iv) since March, 2020, there has been a lockdown owing to the COVID-19 pandemic, and which had caused a disruption in the functioning of Tribunals; (v) while 2018 selection for IAS Rajasthan Cadre was underway, at the very last minute the process was cancelled and the State of Rajasthan was arguing that these posts had been subsumed in the vacancies for the year 2019, to the detriment of the 20 writ petitioners; (vi) the 20 writ petitioners had not been given any opportunity to deal with the allegations which led to cancellation of interview schedule, and there was thus a violation of principles of natural justice; and, (vii) CAT, Jaipur was hearing only 3 to 5 matters sporadically and thus there was no likelihood of the proceedings, if initiated in CAT, Jaipur, being decided.

19. As would be obvious from the above, the Single Judge has given more than enough reasons for exercising jurisdiction under Article 226 and with none of which reasons, at least at this stage, fault can be found with. We would not be entitled to, in exercise of letters patent jurisdiction interfere with the discretion so exercised by the Single Judge for the reasons given.

20. That brings us to the question of territoriality. It has been argued that

all the petitioners are Non SCS officers of the State of Rajasthan, located in Rajasthan, the intervener and others like him are also in Rajasthan, all records relating to the said officers are in the State of Rajasthan and thus this Court is not a convenient forum for adjudicating the petition.

21. Per contra the counsel for the original writ petitioners has contended that UPSC, which had cancelled the interviews and Central Government, which is to nominate the members for the Selection Committee, both have their seat at Delhi and the interviews were also to be held at Delhi and thus Courts at Delhi would have territorial jurisdiction.

22. To be fair to the counsel for the appellants as well as State of Rajasthan, they have not disputed the territorial jurisdiction of this Court and have only contended that the Courts at Delhi are not a convenient forum.

23. The Single Judge, in this regard has referred to (*India TV Independent News Service Pvt. Ltd. v. India Broadcast Live LLC* 2007 (35) PTC 177 Del and *Horlicks Limited. v. Heinz India Pvt. Ltd.* (2009) 156 DLT 330 and held that since the writ petition was being heard during the time of pandemic, when almost all courts and tribunals are holding hearings only through virtual platforms, the convenience of the parties is not to be determined on the basis of their capability to travel and no case for refusing to entertain the writ petition on the ground of forum non convenience was made out.

24. We are also of the view that owing to the limited nature of the challenge made in the writ petition, it cannot be said that it will be inconvenient for any of the parties to litigate at Delhi. They have in fact,

without any hiccup, been litigating at Delhi including by filing the present appeals.

25. There is thus no merit in the appeals.

Dismissed.

RAJIV SAHAI ENDLAW, J

AMIT BANSAL, J

MARCH 8, 2021
'pp'..

