

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Harish Tandon.
&
The Hon'ble Justice Prasenjit Biswas.

WPCT 105 of 2022

(The Union of India & Ors. Vs. Raju Jana & Ors.)

with

WPCT 106 of 2022

(The Union of India & Ors. Vs. Kamal Ali Mondal & Ors.)

with

WPCT 107 of 2022

(The Union of India & Ors. Vs. Suwendu Manna)

For the Petitioner	: Mr. Siddhartha Lahiri, Advocate Ms. Sarda Sha, Advocate Mr. Pradyat Saha, Advocate
For the Respondents.	: Mr. Surojit Samanta, Advocate Mr. Rajarshi Halder, Advocate Mr. Chirantan Sarkar, Advocate Mr. Niraj Kumar Singh, Advocate
For the Respondents.	: Mr. Samrat Sen, Senior Advocate Mr. Achintya Kumar Banerjee, Advocate Ms. Indumati Banerjee, Advocate Mr. Bharat Bhusan, Advocate Mr. Atindranath Misra, Advocate Mr. Uday Narayan Betal, Advocate Mr. Barun Chatterjee, Advocate Mr. Subhankar Sen, Advocate Mr. Lord Chatterjee, Advocate
For the Respondents No. 9	: Ms. Sonal Sinha, Advocate Mr. Shaurya Vir Das, Advocate
Heard on	: November 23, 2022
Judgment on	: November 23, 2022.

The Court: - All the aforesaid writ-petitions are taken up together for disposal to avoid prolixity of repetition as a common order being challenged in all the writ-petitions.

Beleaguered with the provisions of the Contempt of Courts Act, 1971 and the Contempt of Courts (CAT) Rules, 1992, the Union of India, the applications under Article 226 of the Constitution of India challenging a portion of the order dated 27.09.2022 passed by the Central Administrative Tribunal, Kolkata Branch in CP/182/2016 arising out of OA 2023 of 2015 when admittedly the Union of India is not a party in the contempt proceedings, are filed

A preliminary objection was raised by the respondents' Counsel, firstly, that the impugned order challenged in the writ-petition is amenable to be challenged by way of an appeal before the Supreme Court of India under Section 14 of the Contempt of Courts Act, 1971 and secondly, the said order was passed against the alleged contemnor and, therefore, the Union of India cannot be said to be an aggrieved party by any stretch of imagination.

When this point was taken by the respondents, the learned Advocate appearing for the Union of India wanted to work on the aforesaid point having taken as a point of demur and the matter was directed to be listed today.

The learned Advocate for the Union of India submits that there is no fetter in maintaining an application under Articles 226/227 of the Constitution of India if the order passed in a contempt proceeding is not an order punishing for contempt. He placed reliance upon a judgment of the Supreme Court passed in the case of ***T. Sudhakar Prasad Vs. Government of A.P. & Ors.*** reported in **(2001) 1 SCC 516**. It is contended that any order passed by the Tribunal in exercise of the contempt jurisdiction is not amenable to be challenged by way of an appeal under Section 19 of the Act and, therefore, a person cannot be rendered remediless and in view of the Constitution Bench decision rendered in the case of ***L. Chandra Kumar v. Union of India*** reported in **(1997) 3 SCC 261**, the High Court's jurisdiction under Article 226/227 of the Constitution of India is untouched and cannot be abridged even through a legislative fiat. It is further submitted that though a conscious decision has already been taken for providing employment to the land-losers but such appointment cannot be made without verification of the relevant documents, physical efficiency test and medical test.

On the other hand, Mr. Samanta, learned Senior Advocate appearing for the respondents, submits that the contempt jurisdiction is a special jurisdiction conferred upon the Tribunal and does not include each and every person unconnected and/or unrelated with the subject dispute or not made party thereto. The stranger or alien to a contempt proceeding cannot espouse the cause of a party by taking a circuitous route on assertion that the observations made therein vitally affects their rights and undermines the authority at their command. He further submits that there is no distinction which could be found from Section 19 of the Contempt of Courts Act, 1971 making artificial or real difference between the orders passed in the said proceeding and the final order of punishment. He further submits that the Court should be slow and circumspect in entertaining a writ-petition challenging an order issuing a notice on contempt petition as held by the Supreme Court in case of ***Rekhaben H. Sheth Vs. Charu K. Mehta & Ors.*** reported in ***(2010) 11 SCC 102***. He further submits that the Contempt of Courts (CAT) Rules, 1992 provides an exhaustive procedure pertaining to the proceeding having launched on alleged violation of the order of the Tribunal and the order impugned cannot be construed to mean that the observations made therein is conclusive and/or sacrosanct.

On the conspectus of the aforesaid stand, before we venture to proceed further, it would be relevant to consider the provisions relating to the contempt in Administrative Tribunals Act, 1985. Section 17 of the said Act confer power upon the Tribunal to exercise the same jurisdiction, powers and authority in relation to a contempt of itself as a High Court and the provisions of the Contempt of Courts Act shall have effect subject to the modification that wherever there is a reference of the High Court the same shall be construed as a reference to such Tribunal. By virtue of Section 17 of the Act, the Tribunal enjoins somewhat identical powers in respect of a contempt which the High Court possesses and, therefore, there is no ambiguity that the Tribunal is not denuded of any power to punish any person who have exposed himself to be punished under the Contempt of Courts Act.

In exercise of power conferred under Section 23 of the Contempt of Courts Act and Section 17 of the Administrative Tribunals Act, 1985, the

Contempt of Courts (CAT) Rules, 1992 was framed providing the mode, mechanism and the procedures relating to the contempt application. Rule 5 thereof provides the particulars to be set out in an application for contempt whereas Rule 6 relates to the cognizance to be taken in respect of the contempt jurisdiction. The following Rules pertain to the initiation of the proceeding, the preliminary hearing of the notice and the compelling attendance and appearance of the respondents and adherence to the principle of natural justice by permitting the reply to be filed by the alleged contemnor/respondent and a right to be represented and defended through a lawyer.

Rule 13 of the Contempt of Courts (CAT) Rules, 1992 in our opinion, clinches an issue involved in the instant matter and, therefore, it would be profitable to quote the aforesaid provision which runs thus:

13. *Hearing of the case and trial* - *Upon consideration of the reply filed by the respondent and after hearing the parties:*

(a) If the respondent has tendered an unconditional apology after admitting that he has committed the contempt, the Tribunal may proceed to pass such orders as it deems fit;

(b) If the respondent does not admit that he has committed contempt, the Tribunal may, —

(i) if it is satisfied that there is a prima facie case, proceed to frame the charge in Form No. III (subject to modification or addition by the Tribunal at any time); or

(ii) drop the proceedings and discharge the respondent, if it is satisfied that there is no prima facie case, or that it is not expedient to proceed;

(c) The respondent shall be furnished with a copy of the charge framed, which shall be read over and explained to the respondent. The Tribunal shall then record his plea, if any;

(d) If the respondent pleads guilty, the Tribunal may adjudge him guilty and proceed to pass such sentence as it deems fit;

(e) If the respondent pleads not guilty, the case may be taken up for trial on the same day or posted to any subsequent date as may be directed by the Tribunal.

It is manifest from the reading of the afore-quoted Rules that the Tribunal after considering reply filed by the respondent and upon hearing the parties may pass an order as it deem fit. In the event, the unconditional apology is tendered by the said respondent may proceed to frame the charges in a prescribed form if the respondent does not admit to have committed contempt upon recording satisfaction.

The contention of the writ-petitioner in the instant writ-petition is restricted to an observation of the Tribunal in paragraph 9 of the impugned judgment as according to the petitioner the physical efficiency test is mandatory and inevitable and, therefore, nobody can escape therefrom. The petitioner/Union of India perceives such observation to be sacrosanct and if allowed to stand, would cause a chaotic situation throughout the countries wherein identical issues are involved.

We are unable to accept the aforesaid submission and the stand of the Union of India, more particularly, upon noticing the provisions containing in Rule 13 of the said Rules. The aforesaid Rules contemplates two situations, firstly, after the notice is issued and the alleged contemnors appears and tender unconditional apology, the Tribunal may pass an appropriate order in this regard; secondly, in the event, the respondent does not admit to have committed contempt, the Tribunal after being satisfied that there has been prima facie material may proceed to frame the charges in prescribed manner. The expression 'prima facie case' appearing in the aforesaid Rules connotes that the findings made in an order for framing the charge is prima facie finding of the Tribunal and, therefore, is mere tentative. No conclusiveness can be attached to it as after framing the charges, the further modalities and procedures are provided where the alleged contemnor shall get adequate opportunity to defend. Mere prima facie observation does not confer any right into a person to challenge the order as the said prima facie finding affects rights.

We are not unmindful of the proposition that while recording prima facie finding, the Court should not record reasons in such manner which could be construed as final yet we do not find any difficulty when the statutory provision is laudable that any such finding is prima facie in nature and to be construed to have been made in pursuit of framing the charges in the prescribed format.

On the basis of the above, we do not feel that the instant writ-petition can be maintainable against such finding. After observing so, the other points would become academic yet we intend to make such observations as such points are addressed and canvassed before us.

There is no quarrel to the proposition that mere issuance of a notice in a contempt jurisdiction is not amenable to be challenged before the higher form. It is mere inviting the attention of the person who alleged to have violated the order to put his defence and, therefore, cannot be perceived to be a final adjudication which is apparent from the observations made in paragraph 17 of the judgment rendered in **Rekhaben H. Sheth (supra)** which runs thus:

15. Having carefully considered the submissions made on behalf of respective parties, we see no reason to interfere with the order of the learned Single Judge issuing notice on the contempt petition filed by the Respondent No.1 herein. The learned Judge observed that the Respondent No.1 had raised serious objections in the main application about the payment of Advocate's fees from Trust funds for fighting personal litigations of the Trustees. The learned Judge took sufficient care to indicate that except for cognizance of the allegations made against the Petitioner and the Respondent Nos.2 to 5, cognizance against the other Trustees had not been taken as the material against them were insufficient to frame charges. However, liberty was also given that when sufficient material in support of the allegations was placed on record, it could take cognizance of such complaint. A chart has been filed on behalf of the Petitioner, Respondent Nos.2 to 5 and the other Trustees to show the amounts which had been paid to the learned counsel amounting to approximately Rs.3= crores. Although, an attempt was made by Mr. Desai to justify such expenditure, we are unable to agree with his submissions, since as observed by the learned Single Judge of the Bombay High Court, most of the said funds were spent by the Petitioner, the Respondent Nos.2 to 5 and the other Trustees for defending themselves in respect of the various cases which had been brought against them by the Respondent No.1, Charu K. Mehta.

In **T. Sudhakar Prasad (supra)**, the three-Judge Bench of the Supreme Court was considering various provisions of the Administrative Tribunal Act, 1985 in relation to the powers conferred upon the Tribunals to punish for its contempt. The Apex Court was considering whether the situation for which decision rendered in case of **L. Chandra Kumar (supra)** can be rendered otiose upon introduction of Section 17 in the said Tribunal Act. The Apex Court succinctly highlighted the importance of keeping the provision of Section 17 of the said Act and to dispel any doubts held that the Tribunal being not a Court though exercising the powers and jurisdiction of the High Court under the Contempt of Courts Act, it would remain amenable to the jurisdiction of the High Court under Articles 226/227 of the Constitution subject to the self-restriction imposed by the Court on itself. It is further held that every order passed by the

Tribunal under the contempt jurisdiction may not be available under Section 19 of the Contempt of Courts Act as the order punishing for contempt is amenable to appeal under Section 19 of the said Act.

The Constitution Bench in ***L. Chandra Kumar (supra)*** applying and restating the concept of basic structure held that the powers of the High Court under Articles 226/227 of the Constitution fall within such category and cannot be subverted and abrogated by using a legislative power. Though there is no absolute bar in maintaining the application under Article 226/227 of the Constitution before the High Court despite the existence of an alternative efficacious remedy yet the Courts have imposed self-restriction in entertaining such applications when the point canvassed therein can be conveniently and finally decided by the statutory forum. It is a rule of discretion than compulsion. The Court may refuse to exercise discretion if the alternative remedy can give an effective and complete resolution of the disputes.

In view of the ratio laid down in ***T. Sudhakar Prasad (supra)*** every order passed in exercise of contempt jurisdiction is not amenable to appeal before the Supreme Court under Section 19 of the Act; it is only the order punishing for contempt which is amenable. It would be relevant to quote the excerpts from the said report which runs thus;

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 court or tribunals subordinate to 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 High Court or to file a complaint under Section 193, 219 and 228 of 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 Association (supra) or L. Chandra Kumar (supra) 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 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 the Parliament to enact a law specifying the jurisdiction and powers, including the power to punish for contempt, being conferred on 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 jurisdiction of High Court under Article 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 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 Administrative Tribunals Act is a piece of legislation by reference. The provisions of Contempt of Courts Act are not as if lifted and incorporated in the text of Administrative Tribunals Act (as is in the case of legislation by incorporation); they remain there where they are yet while reading the provisions of 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 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 has nowhere said that orders of tribunal holding the contemnor guilty and punishing for contempt shall also be subject to judicial scrutiny of High Court under Article 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 Administrative Tribunal on matters covered by Section 14 (1) of Administrative Tribunals Act and orders punishing for contempt under section 19 of the Contempt of Courts Act read with Section 17 of Administrative Tribunals Act, is this : as against the former there is no remedy of appeal statutorily provided, but as against the later statutory remedy of appeal is provided by Section 19 of Contempt of Courts Act itself.

18. Subordination of Tribunals and courts functioning within the territorial jurisdiction of a High Court can be either judicial or administrative or both. The power of superintendence exercised by the High Court under Article 227 of the Constitution is judicial superintendence and not administrative superintendence, such as one which vests in the High Court under Article 235 of the Constitution over subordinate courts. Vide para 96 of L. Chandra Kumars case, the Constitution Bench did not agree with the suggestion that the tribunals be made subject to the supervisory jurisdiction of the High Courts within whose territorial jurisdiction they fall, as our constitutional scheme does not require that all adjudicatory bodies which fall within the territorial jurisdiction of any High Court should be subject to its supervisory jurisdiction. Obviously, the supervisory jurisdiction referred to by the Constitution Bench in para 96 of the judgment is the supervision of the administrative functioning of the tribunals as is spelt out by discussion made in paras 96 and 97 of the judgment.

Though each and every order may not be amenable to be challenged by way of an appeal yet the Court may refuse to exercise discretion depending upon the fact of each case as in case of **Rekhaben H. Sheth (supra)**. We hasten to say that the jurisdiction under Article 226/227 of the Constitution can be invoked against an order passed by the Tribunal which is not an order punishing for contempt. Equally it is within the discretion of the Court depending upon the nature of the order and the power under the aforesaid jurisdiction.

We thus hold that although the application under Article 226/227 of the Constitution may be maintainable if the order is not a final order passed in a

contempt jurisdiction but in view of the facts and the nuances of the provisions as discussed above, we feel that there is no merit in the instant writ-petitions.

WPCT 105 of 2022, WCPT 106 of 2022 and WPCT 107 of 2022 are hereby **dismissed**. No order as to Costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)