

24.04.
2023

Ct. No. 04

Ab

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side.

WP.ST 63 of 2023

Srikanta Das and others
Vs.
State of West Bengal and others.

Mr. Arunava Banerjee,
Mr. Sk. Qareeb.

... for the petitioners.

Mr. Tapan Kumar Mukherjee, Ld. AGP,
Mr. Rajat Dutta.

... for the State.

Mr. Arunava Banerjee, learned Advocate appearing for the petitioners, in his usual eloquence has projected the miseries, the plights and the consternation suffered by his clients because of the pendency of the tribunal application for a considerable period of time and invited the Court to deal with the issues involved in the tribunal application in exercise of power under Article 226 of the Constitution of India.

It is vociferously submitted by Mr. Banerjee that the Tribunal is non-functional and the certified copy of the orders passed in the proceeding would reveal that several dates were fixed for hearing of the matter and he has a strong believe in the system of the Tribunal that any direction passed by this Court would not be respected nor be adhered to.

Though it is not submitted in express terms that this Court should usurp the power of the Tribunal and decide the said application, but the manner in which the arguments are advanced create such impression in our mind when have been taken to several orders passed by

the Tribunal and the decision taken by the authorities in support of the legitimate right of the petitioners, which, according to Mr. Banerjee, has been crystallized and attained finality. According to Mr. Banerjee, the indifferent attitude of the different departments of the Government has created such impasse and, therefore, the Tribunal ought not to have mechanically adjourned the matter.

Such being the argument having advanced, we do not agree with the submission of Mr. Banerjee that the West Bengal Administrative Tribunal is non-functional. There is a distinction between non-existence of the system and the existence of the system functioning with limited capacities. After the promulgation of the Administrative Tribunals Act, 1985 with an intent to provide for adjudication or trial of the disputes and the complaints with regard to the condition of service of a person appointed in public service and the posts in the Union or the State, a specialized institution in the form of Tribunal was established under Article 323A of the Constitution of India. Section 14 of the said Act, which deals with the jurisdiction, power and authority of the Administrative Tribunal is categorical to the extent that said Tribunal shall exercise all jurisdiction, power and authorities exercisable immediately before that date by all Courts (except the Supreme Court) in relation to the eventualities provided therein. By virtue of the aforesaid provision, initially it was construed that the power of the High Court under Article 226 of the Constitution of India has been expressly taken away by enacting a law, which led several writ petitions to be filed in different High Courts including the Supreme Court.

The Constitution Bench in case of *L. Chandra Kumar vs. Union of India and others*, reported in (1997) 3 SCC 261 held that the powers of the High Court under

Article 226 and 227 of the Constitution of India cannot be abrogated nor taken away through a legislative fiat nor by enacting an Act, which is subservient to the Constitution of India and accepted the basic structure theory in upholding the powers of the High Court in this regard. However, it was observed that instead of approaching the Single Bench of the High Court, it is proper that the litigant must approach the Tribunal, which should be regarded as Court of first instance and thereafter the approach can be made to the Division Bench of the High Court under Article 226 and 227 of the Constitution of India.

Such being the law prevalent as on the day, bypassing the forum and inviting the Division Bench of the High Court to usurp the power of the Tribunal, if entertained, would not only frustrate the legislative intent subvert the establishment of the Tribunal but also explode the docket of the High Court, as in every case the litigant would approach the High Court directly or immediately upon filing the tribunal application to decide the main issue. It would not be proper on the part of the High Court to take up all the cases pending before the Tribunal and decide the same by itself when admittedly the Tribunal cannot be said to be non-existent or non-functional but functions under the limited capacities.

We are not oblivious of the fact that the West Bengal Administrative Tribunal is functioning with one Administrative Member dealing with the heap of the cases mounting day by day, but cannot accept the contention of Mr. Banerjee that the said Tribunal is non-functional. It appears that the parties have consented that the matter to be taken up by a Single Member of the Bench and, in fact, the matters are being dealt with as one of the order passed by the Single Bench Member records a further hearing in the matter and lastly it has

been fixed on 12th July 2023.

We expect and hope that the said Single Member shall take up the instant matter on the date so fixed and endeavour shall be shown to bring the litigation to its logical conclusion within one month therefrom in accordance with law.

With these observations, the writ petition is disposed of.

There shall, however, be no order as to costs.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)