

Shahin Rustam Vs Indira Gandhi National Open University

Court: Delhi High Court

Date of Decision: Aug. 13, 2014

Acts Referred: Administrative Tribunals Act, 1985 " Section 14(1), 3
Constitution of India, 1950 " Article 323A, 323B

Hon'ble Judges: S.P. Garg, J; Reva Khetrpal, J

Bench: Division Bench

Advocate: Sanjay Sharawat, Advocate for the Appellant; R.N. Singh, Sana Ansari and Akshay Makhija, Advocate for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Reva Khetrpal, J.

CM No.13182/2014

Exemption granted subject to all just exceptions.

Application stands disposed of.

LPA 526/2014 and CM No.13181/2014

1. This appeal is directed against the judgment dated July 23, 2014 passed by a learned Single Judge of this Court declining to entertain the writ

petition filed by the Appellants and disposing of the same with liberty to the Appellants to either file a writ petition in the High Court for seeking

appropriate directions to the Respondent No.3/National Council for Teacher Education and Respondent No.4/Northern Regional Committee to

grant recognition to the diploma in primary education course jointly by the Respondent No.1/IGNOU and Respondent No.2/MANUU or, in the

alternative, to file an original application before the Tribunal, as may be advised.

2. The brief facts leading to the filing of the writ petition being relevant are stated hereunder.

3. The National Council for Teacher Education [hereinafter referred to as "the NCTE "]/the Northern Regional Committee [hereinafter referred to

as "NRC "] granted recognition to the Indira Gandhi National Open University [hereinafter referred to as "IGNOU "] for conducting "Diploma in

Primary Education " [DPE] for 1999-2000 academic session. By another recognition order dated 21.08.2000, the NCTE/NRC further gave

recognition to IGNOU for conducting ""Diploma in Primary Education "" [DPE] from 2000 -01 academic session. Thereafter, the IGNOU and

MANUU entered into a Memorandum of Collaboration in the year 2004 inter alia for offering joint degree and diploma programmes with a

particular emphasis on Urdu as medium of instruction. On 08.08.2006, the IGNOU and MANUU entered into an Agreement for Acquisition of

Translation Rights whereby IGNOU permitted MANUU to translate its study material for certain courses in Urdu language. IGNOU also entered

into agreements with MANUU for offering joint degrees and diploma programmes and had started a teachers training course, namely, ""Diploma in

Primary Education "" [DPE] in Urdu medium for the academic session 2006-08.

4. Both the Appellants took admission in the aforesaid course and were awarded certificates jointly by the Respondent No.1/IGNOU and the

Respondent No.2/MANUU.

5. In the year 2009, the Respondent No.6, namely, Delhi Subordinate Services Selection Board [hereinafter referred to as ""DSSSB ""] issued an

advertisement inviting applications for appointments to various posts in the Government of NCT of Delhi. The Appellants submitted their

applications for being appointed to the post of Teacher [Primary-Urdu] in the MCD, now Respondent No.5 ~~~~~ South Delhi Municipal

Corporation [hereinafter referred to as ""SDMC ""]. Since the Appellants belonged to the OBC category for which 62 vacancies were reserved,

they were issued admission cards by the DSSSB for appearing in the written examination scheduled to be conducted on 28.04.2013. The

Appellants duly appeared in the same but their candidature was rejected by the impugned rejection notice dated 01.03.2014 on the ground that

they did not possess the educational qualification as per the recruitment rules provided by the user department, i.e., the Respondent No.5/SDMC.

6. Being aggrieved by the impugned decision taken by the Respondent No.3 in declaring the DPE course conducted by Respondent Nos.1 and 2

for academic session 2006-08 as unrecognized and the consequential rejection of candidature of the Appellants by the Respondent No.6, the

Appellants filed W.P.(C) No.4512/2014 before the learned Single Judge on 15.07.2014 claiming the following reliefs:-

[a] Issue a writ of Certiorari and quash the decision taken by Respondent No.3 [NCTE] in terms of its letter dated 11.02.2014 thereby treating

the DPE course conducted by Respondent No.1 & 2 as unrecognized; and

[b] Issue an appropriate writ, order or direction and declare and hold that the course namely ""Diploma in Primary Education "" conducted by the

Respondent No.1 and 2 in collaboration with each other for academic session 2006-08 is duly recognized by the Respondent No.3 and 4 and

consequently declare that the qualifications/certificates dated 08.10.2008 [Annexure P-6 (Colly)] issued by the Respondent No.1 and 2 to the

Petitioners in recognition of having completed said course is legal, valid and duly recognized for all intents & purposes; and

[c] Consequently issue a writ of certiorari and quash the rejection of candidature of the Petitioners shown in the rejection notice dated 01.03.2014

at S .Nos.53 and 2 respectively [Annexure P-12] and declare them to have been duly selected in the examination conducted by the Respondent

No.6 for the post of Teacher [Primary Urdu] with post code:69/09 and accordingly direct the Respondent No.5 & 6 to issue appointment letters

to the Petitioners for said post.

7. The aforesaid writ petition was listed for admission hearing before the learned Single Judge on 23.07.2014. It would be relevant at this juncture

to note that the Registry of this Court had raised objection with regard to the maintainability of the writ petition before the learned Single Judge and

consequently the learned Single Judge required the counsel for the Appellants to first address the Court on the said aspect.

8. In the course of hearing before the learned Single Judge, it was not denied by the counsel for the Appellants that in the instant case the

Respondent No.5/SDMC was the user agency which had been duly notified under the Administrative Tribunals Act, 1985. The submission of the

counsel for the Appellants was that the Appellants had approached the High Court directly for the reason that the primary relief was directed

against the Respondent No.3/NCTE and since the reliefs prayed for could not be segregated, the present petition was maintainable directly in the

High Court, without first approaching the Central Administrative Tribunal.

9. It deserves to be noted at this stage that the counsel appearing for the Respondent No.5/SDMC and the Respondent No.6/DSSSB submitted

to the contrary. Placing reliance upon the judgment of the Constitution Bench of the Supreme Court in the case of L. Chandra Kumar Vs. Union of

India and others, , it was contended by the Respondent Nos.5 and 6 that the Central Administrative Tribunals created under Article 323A and

323B of the Constitution of India were competent to entertain such a petition, particularly since the user agency had been duly notified under the

Act. Reliance was also placed by them upon a decision of this Court dated 28.07.2011 in LPA No.606/2011, entitled ""Delhi Subordinate

Services Selection Board and Anr. Vs. Shikha Arora "" to urge that the present petition ought to have been filed before the Tribunal in the first

instance.

10. The learned Single Judge, relying upon the decision of the Supreme Court in L. Chandra Kumar case (supra) and of the Division Bench in the

case of Shikha Arora (supra) wherein the Division Bench by relying on the decision in the case of L. Chandra Kumar (supra) had held that the

Single Judge ought not to have entertained the writ petition filed by the Respondent in the first instance, declined to entertain the writ petition as

noted hereinabove.

11. Before proceeding further, we deem it expedient to reiterate that it is not in dispute that in the instant case the Appellants seek appointment to

the post of Primary Teacher (Urdu) with the Respondent No.5/SDMC. The Respondent No.5 is thus the user agency and as already stated the

Respondent No.5 stands duly notified under the Administrative Tribunals Act, 1985. The Respondent No.6/DSSSB, on the other hand, is only the

recruiting agency and u/s 3 read with Section 14(1) of the Act, it is the post that matters and determines the jurisdiction. Since the posts are of the

user agency, namely, the Respondent No.5/SDMC and it stands duly notified under the Act, the jurisdiction in respect of the said posts vests with

the Central Administrative Tribunal in the first instance in terms of L. Chandra Kumar case (supra). It is thus not open for the Appellants to by-

pass the jurisdiction of the Tribunal and directly approach the High Court.

12. The sole contention of learned counsel for the Appellants is that the jurisdiction of a Court is determined on the basis of substantive cause of

action and not on the basis of consequential issues that may be involved in the lis. He also contended that the relief claimed from the same cause of

action cannot be split so as to avail two proceedings on the same cause of action, one before this Court for claiming the main relief and another

before the CAT for claiming the consequential relief. The CAT was completely powerless to adjudicate upon prayers (a) and (b) made by the

Appellants in the writ petition pertaining to recognition of educational institutions governed by the NCET Act. The prayer claimed in clause (c) was

purely consequential and incidental to the said main prayers.

13. We do not find any merit in the aforesaid contention. The learned Single Judge has dwelt upon this aspect and has rightly observed that the

decision of the Supreme Court in the case of L. Chandra Kumar (supra) on this aspect is clear. The Appellants are seeking appointment with the

Respondent No.5/SDMC and under the Act, the same is required to be dealt with by the Central Administrative Tribunal, Principal Bench at

Delhi. The jurisdiction of the said Tribunal cannot be by-passed by the Appellants approaching this Court directly. The learned Single Judge, in our

opinion, has also rightly rejected the contention of the Appellants " counsel that the third relief claimed in prayer (c), which is for the quashing of the

rejection notice dated 01.03.2014 issued by the Respondent No.6/DSSSB is only a consequential relief and cannot be segregated. But even

assuming the same to be correct, the judgment of the Supreme Court in L. Chandra Kumar (supra) clinches the issue. What has to be decided in

the present case is the constitutional validity of the recruitment rules of the user department, i.e., the Respondent No.5/SDMC and the Tribunal has

been vested with the power of doing so. The following extract from the L. Chandra Kumar case (supra) is apposite and is accordingly reproduced

hereunder:-

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 setup, 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 Tribunal concerned.

14. We find no merit in the present appeal, which is accordingly dismissed with liberty to the Appellants to approach the Tribunal in the first

instance. CM No.13181/2014 also stands disposed of.