National Insurance Co. Ltd. and Others Vs Gauri Roy (Deb.) and Others

Court: Gauhati High Court (Agartala Bench)

Date of Decision: March 18, 2005

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 115
Constitution of India, 1950 â€" Article 102, 103(1), 105(2), 122, 124(4)
Motor Vehicles Act, 1988 â€" Section 149(2), 173

Citation: (2005) 1 GLT 569

Hon'ble Judges: I.A. Ansari, J

Bench: Single Bench

Advocate: B. Bhattacharjee, K. Bhatacharjee, D.K. Bhowmik, S. Lodh, A.K. Bhowmik, S. Ghosh, S.R. Dey, A. Deb and P. Gautam, for the Appellant; S. Deb, A.L. Saha, J. Paul, S.K. Datta, P. Roy Barman, B. Saha, P.S. Deb, A.G. Chowdhury, D. Laskar, P.K. Pal, P. Deb, D.R. Rai, B.N. Majumder, S.M. Chakraborty, A. Sengupta, S.R. Dey, A. Deb, P.K. Biswas, T. Ali, J. Islam, P.K. Dhar, S.C. Majumdar, U.K. Majumder, A.C. Bhowmik, R. Data, J.C. Das, J. Saha, A.K. Banerjee, S.K. Banerjee, G. Debnath, D.R. Paul, P. Deb, M. Kar Bhowmik, S. Adhikari, B.C. Das, S. Talapatra and K.C. Das, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

I.A. Ansari, J.
It is not uncommon for a Court of law to face challenge to its own jurisdiction and authority. It is not unusual that a Court of

law is invited to decide if it has the jurisdiction in a given case and, if so, what are the parameters of its jurisdiction and powers. When such a

question is raised, the Court cannot ignore or brush aside the question so posed and must decide the same in accordance with law. If the Court

finds that it has no jurisdiction, it shall have no hesitation in saying so; but if it finds that it has the jurisdiction, it must boldly declare so and lay down

the ambits of its own powers.

2. The legitimacy of the power of the Courts to review legislative action has been one of the most debated questions in the Indian Legal History.

While presenting his views on the significance of Article 25, which corresponds to the present Article 32 of the Constitution of India, Dr. B.R.

Ambedkar, Chairman of the Drafting Committee of the Constituent Assembly, expressed himself as follows:

If I was asked to name any particular article in his Constitution as the most important-an article without which this Constitution would be a nullity-I

could not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the House has

realized its importance.

3. Notwithstanding the fact that Article 32 was described as the heart and soul of the Constitution, the parameters of the powers of even the

Supreme Court under Article 32 to review legislative action has remained one of the subjects of intense debate in Indian Legal History. No

wonder, therefore, that contours of the powers of the High Court under Article 226 and/or 227 of the Constitution come to be questioned before

the High Court itself. When the question has been raised, the High Court has to answer the question and so do I.

4. I have heard learned Counsel appearing on behalf of the parties concerned.

5. The present set of Civil Revision Petitions and Writ Petitions have been resisted, at their very threshold, by the Respondents by challenging the

maintainability thereof.

6. By this common order, I intend deciding the maintainability of the present set of Writ Petitions, for the maintainability of all these Writ Petitions

stand challenged before this Court, broadly speaking, on similar grounds and for this reason, all these petitions have been heard together and the

same are capable of being disposed of by one common order so far as the question of their maintainability is concerned.

7. The grounds on which the maintainability of the present set of Writ Petitions has been challenged give rise to the following three questions for

determination:

1. Against an award rendered by a Motor Accident Claims Tribunal, which is appealable u/s 173 of the Motor Vehicles Act, 1988 (hereinafter

referred to as ""the MV Act), whether an insurer can invoke revisional jurisdiction of the High Court u/s 115 of the CPC (hereinafter referred to as

the Code"") on the grounds beyond those, which are available to an insurer u/s 149(2) of the MV Act?

2. Against an award rendered by a Motor Accident Claims Tribunal, which is appealable u/s 173 of the MV Act, whether an insurer can, under

any circumstance, impugn an award in an application under Article 226 and/or 227 of the Constitution of India or whether this constitutional

remedy is completely barred so far as an insurer is concerned?

3. Whether the power of judicial review vested in the High Courts under Articles 226 of the Constitution of India and power of superintendence

conferred on the High Courts under Article 227 of the Constitution form part of the basic structure of the constitution and whether the powers, so

given to the High Courts, can be taken away by amendment of the Constitution or by any piece of legislation?

8. Before proceeding any further, it needs to be carefully noted that the question Nos. 1 and 2 were raised in a set of Writ Petitions and Civil

Revision Petitions in Oriental Insurance Co. Ltd. Vs. Mustt. Rejina Begum and Others, which were disposed of, on 20.01.2005 by this Court.

9. What needs to be, now, carefully noted is that the grounds of challenge with regard to the maintainability of the present set of Civil Revision

Petitions are same as those, which were raised in Oriental Insurance Co. Ltd. (supra). In Oriental Insurance Co. Ltd. (supra), this Court dealt with

the question of maintainability of the Civil Revision Petitions arising out of awards, which were appealable u/s 173 of the MV Act, and concluded,

for the reasons recorded by this Court, that the revisional jurisdiction cannot be invoked in respect of a final award, which is appealable u/s 173 of

the MV Act. I see no reason to take a view different from what this Court has already taken in Oriental Insurance Co. Ltd. (supra). I may, of

course, hasten to add here that this view was formed by this Court without, however, determining the question as to whether a Tribunal,

constituted under the MV Act, is a Court, subordinate to the High Court, within the meaning of Section 115 of the Code or not, for, the question

as to whether the Tribunal, constituted under the MV Act, is or is not a Court, subordinate to High Court, within the meaning of Section 115 of the

Code, has been referred to a larger Bench.

10. In view of the above, I answer the question No. 1 by holding, as has already been held in Oriental Insurance Co. Ltd. (supra), that in respect

of an award rendered by a Tribunal under the MV Act, which is appealable u/s 173 of the MV Act, the High Court"s revisional jurisdiction u/s

115 of the Code cannot be invoked.

11. So far as the question No. 2 is concerned, what needs to be noted is that though this question has been answered partially in the affirmative in

Oriental Insurance Co. Ltd. (supra), the fact remains that the answer to the question No. 2 will, now, really depend on the answer to the question

No. 3 for, what is of immense importance to note is that the question No. 3 was never raised in Oriental Insurance Co. Ltd. (supra). It is,

therefore, necessary that this Court, first, deals with the submissions made by the learned Counsel for the parties concerned on the question No. 3

and determine the answer thereto. With this object in mind, let me proceed further.

12. Questioning, at the very threshold, the maintainability of the present set of writ petitions, it has been submitted, on behalf of the Respondents,

that in the light of the law laid down in Sadhana Lodh Vs. National Insurance Company Ltd. and Another, it is no longer open to the High Court to

entertain against an award, which is appealable u/s 173 of the M.V. Act, any writ petition under Articles 226 and/or 227 of the Constitution of

India, for the Apex Court has laid down in Sadhana Lodh (supra) that since a limited right of appeal has been provided u/s 173 of the M.V. Act to

the insurer, the limited grounds of appeal cannot be enlarged by making any application under Article 226 and/or 227 of the Constitution. In other

words, the resistance to the maintainability of the present set of writ petitions is offered on the ground that the insurer cannot invoke High Court''s

jurisdiction under Articles 226 and/or 227 of the Constitution inasmuch as a statutory right of appeal is already available to the insurer against the

award passed by the Tribunal on limited grounds as provided u/s 149(2) of the M.V. Act, 1988, and if the grievance of the insurer does not fall

within the grounds enumerated in Section 149(2), the insurer cannot enlarge the scope of the grounds, mentioned u/s 149(2), by taking recourse to

a writ petition under Articles 226 and/or 227 of the Constitution and invite thereby the High Court to exercise the powers of an appellate Court in

the garb of exercising the powers of judicial review under Article 226 and/or of superintendence under Article 227. It is further submitted, on

behalf of the Respondents, that the Full Bench decision of this Court in Milan Rani Saha v. New India Assurance Co. Ltd. reported in 2000 (2)

GLT 293, wherein it has been held to the effect that notwithstanding the limited statutory right of appeal provided to the insurer, the High Court''s

power under Article 226 and/or 227 has not been taken away and can be invoked, in an appropriate case, no longer remains a good law and must

be deemed to have been over-ruled by the decision in Sadhna Lodh (supra) so far as the insurers are concerned.

13. Resisting the submissions made on behalf of the Respondents challenging the very maintainability of the present set of Writ Petitions, it is

contended, on behalf of the Petitioners, that the decision in Sadhana Lodh (supra) does not lay down a law of general proposition that an award

given by a Tribunal can, under no circumstances, be challenged by an insurer except by way of appeal on the grounds, which are embodied in

Section 149(2) of the M.V. Act, and that such an interpretation, if resorted to, with regard to the powers of the High Court under Articles 226 and

227, the same would go contrary to the consistent views expressed by the Apex Court that the powers under Articles 226 and 227 cannot be

abridged or taken away or curtailed by a statute and, in an appropriate case, there is no limitation on the powers of the High Court to invoke its

jurisdiction under Article 226 and/or 227. The decision in Sadhana Lodh (supra), it is reiterated on behalf of the Petitioners, does not lay down a

law of general proposition and must be read to have been kept confined within the context of the facts of that case and the decision in Milan Rani

Saha (supra) still holds the field, for the law laid down therein has not been over-ruled, directly or by implication, either by the decision in Sadhana

Lodh (supra) or by any other judicial pronouncement.

14. In support of their contention that Sadhana Lodh (supra) does not, in an appropriate case, bar the High Court''s jurisdiction under Article

226/227 of the Constitution of India, the learned Counsel for the Petitioners point out that Articles 226/227 form part of the basic structure of the

Constitution and when the power of judicial review and superintendence, so conferred on the High Court under Article 226/227 of the

Constitution, cannot be taken away by amendment of the Constitution, the question of taking away of such a power by enacting a statute, such as,

the M.V. Act, does not arise at all. For the proposition that the judicial review forms part of the basic structure of the Constitution, reliance has

been placed on L. Chandra Kumar Vs. Union of India and others, wherein the Constitutional Bench of 7 Judges has held, it is pointed out, that the

jurisdiction conferred on the High Court under Article 226/227 is a part of the basic structure of the Constitution.

15. Controverting the above submissions, it is contended by Mr. Somik Das, on behalf of some of the Respondents, that the decision in L.

Chandra Kumar (supra) goes against the decision of the larger Constitutional Bench rendered in His Holiness Kesavananda Bharati Sripadagalvaru

Vs. State of Kerala, for in Keshavananda Bharati (supra), points out by Mr. Somik Das, the majority judgment, while culling down the various

facts of the Constitution, which form the basic structure of the Constitution, did not include the power of judicial review as a part of the basic

structure of the Constitution in the case of Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, the view expressed by Bhagawati,

J. that the power of judicial review forms part of the basic structure of the Constitution was, points out Mr. Somik Das, a minority view. It is

contended by Mr. Somik Das, on behalf of some of the Respondents, that it is this minority view, though contrary to the majority opinion in

Keshavananda Bharati (supra), which the Constitutional Bench in L. Chandra Kumar (supra) has adopted; hence, the decision in L. Chandra

Kumar (supra) that the power of judicial review forms part of the basic structure of the Constitution, being, according to Mr. Somik Das, contrary

to the majority view expressed in Keshavananda Bharati (supra), cannot be followed and it is the law laid down in Keshavananda Bharati (supra),

which shall prevail.

16. In short, what is contended by Mr. Somik Das, on behalf of the some of the Respondents, is that since the majority opinion in Keshavananda

Bharati (supra) does not include the power of judicial review conferred on the High Courts as forming part of the basic structure of the

Constitution, the subsequent decisions including L. Chandra Kumar (supra) laying down that the power of judicial review forms part of the basic

structure of the Constitution cannot prevail and it must be held that the power of judicial review does not form part of the basic structure of the

Constitution and in this view of the matter, when the legislature thought it fit to circumscribe the right of appeal of the insurer u/s 149(2), the High

Court cannot enlarge the scope of such limited right of appeal by interfering with an appealable award under Articles 226/227, for such resort to

Articles 226/227 will be contrary to legislative mandate, which the Court should avoid. A number of provisions contained in the Constitution have

been pointed out, on behalf of some of the Respondents by Mr. Somik Das, to show that the Constitution itself restricts the High Courts from

exercising the power of judicial review in certain cases, such as, election petitions, impeachment of the President or of the Judges of the High

Courts and Supreme Court, etc. Referring to Articles 32(1), 61, 67(b), 74(2), 77(2), 90(c), 102, 105(2), 122, 124(4), 148(1), 163(3), 166(2),

179(c), 183(c), 192(1), 194(2), 212, 217(1)(b), 243-O, 243-ZG, 262(2), 312A(3), 317(1), 329, 356, 361, 361A and 363 of the Constitution

of India and particularly, to Articles 74 and 356, it is pointed out that what advice has been rendered by the Council of Ministers to the President is

immune from judicial scrutiny. It is submitted, eventually, on behalf of these Respondents, that had the judicial review really formed part of the

basic structure of the Constitution, the question of the Constitution itself restricting the exercise of the power of judicial review by the High Courts

in some cases would not have arisen at all.

17. In the light of the rival submissions made on behalf of the parties, what falls for consideration is as to whether the decision in Milan Rani Saha

(supra) has been over-ruled by Sadhana Lodh (supra); what it will, in effect, mean is that Articles 226 and 227 shall be treated as non est so far as

an award made by a Tribunal under the M.V. Act is concerned. Is such an interpretation possible to be attributed to the decision in Sadhan Lodh

(supra)? This question, in turn, brings us to the more fundamental question which the Respondents have raised, and the question is this: whether the

power of judicial review and superintendence conferred on the High Courts under Article 226 and 227 of the Constitution form part of the basic

structure of the Constitution or not?

18. As regards the submissions made, on behalf of some of the Respondents by Mr. Somik Das, that since the Constitution itself, in certain cases,

restricts High Court''s power of judicial review, the judicial review cannot be said to form part of the basic structure of the Constitution, it is worth

noticing that our Constitution depends on check and balance. None of the constitutional authorities enjoy absolute power. Lest absolute power

make any of the constitutional authorities including the Courts arbitrary and become cause of the failure of the constitutional scheme, the

Constitution itself imposes, wherever necessary, restrictions on the exercise of such powers. Such restrictions may be expressed or implied. No

wonder, therefore, that though the Parliament has the power under Article 368 to amend the Constitution, it cannot amend the same in a manner,

which would damage or destroy the basic structure of the Constitution. Though President or the Governor, as the case may be, has the power to

grant pardon, this power is subject to judicial review and cannot depend on the whims and fancies of any individual authority or authorities

concerned. Though the Parliament has the power to amend the constitution, it does not follow that the constitution bean be amended in such a

manner that the parliament becomes denuded of its own powers to amend the Constitution in future. Such an amendment will, obviously, destroy

the basic structure of the Constitution and cannot be permitted. Similarly, though there may be some restrictions imposed by the Constitution on the

exercise of the powers of judicial review, further restrictions on such powers would be impermissible if the power of judicial review is held to form

part of the basic structure of the Constitution.

19. It is, no doubt, true, as points out Mr. Somik Das, that once the election process commences, some limitations are imposed on the powers of

the High Court to interfere in the election process. Once, however, the election process is over, restrictions, so imposed, are removed. Article 226

empowers the High Court to exercise the power of judicial review, when there is any act, which is against any of the provisions of law or violative

of constitutional provisions and when recourse cannot be had to the provisions of an enactment for appropriate relief. Hence, if the election laws

also do not provide for appropriate relief, there can be no impediment on the powers of the High Court to exercise, in such cases, the power of

judicial review in respect of an act against which no appropriate relief has been made in the enactment, provided, of course, that the enactment

makes the exercise of power of judicial review possible in the light of the settled principles evolved by the Courts, see K. Venkatachalam Vs. A

Swamickan and Another, That the election tribunals are subject to superintendence of the High Courts under Article 227 stands settled by the

decisions of the Supreme Court in Waryam Singh and Another Vs. Amarnath and Another, and Bhatraju Nageshwara Rao v. Hon"ble Judges of

the Madras High Court AIR 1955 SC 215

20. While considering the above aspect of the matter, it is of paramount importance to note that it is not disputed before me nor could it be

disputed that what the Constitution Bench in Kesavananda Bharati (supra) has held is that though the Parliament has the power, under Article 368,

to amend the constitution, this power cannot be exercised to damage the basic features of the Constitution or to destroy its basic structure. The

difficulty, however, arises in identifying those features of the Constitution, which can be said to constitute the basic structure of the Constitution.

Noticing this difficulty, and also taking into account the fact that no elaborate discussion on the powers of judicial review found place in the

majority judgments given in Kasavannanda Bharati (supra), the Court, in L. Chandra Kumar Vs. Union of India and others, observed:

62. In Kesavananda Bharati case a thirteen-judge Constitution Bench, by a majority of 7:6, held that though, by virtue of Article 368, Parliament is

empowered to amend the Constitution, that power cannot be exercised so as to damage the basic features of the Constitution or to destroy its

basic structure. The identification of the features which constitute the basic structure of our Constitution has been the subject-matter of great debate

in Indian Constitutional law. The difficulty is compounded by the fact that even the judgments for the majority are not unanimously agreed on this

aspect. (There were five judgments for the majority, delivered by Sikri, C.J., Shelat and Grover, JJ; Hegde and Mukherjee, JJ., Jaganmohan

Reddy, J. and Khanna, J. While Khanna, J. did not attempt to catalogue the basic features, the identification of the basic features by the other

Judges are specified in the following paras of the Court"s judgments; Sikri C.J. (para 292), Shelat and Grover, JJ. (para 582), Hegde and

Mukherjee, JJ. (Paras 632 and 631), The aspect of judicial review does not find elaborate mention in all the majority judgments, Khanna, J did

however, squarely address the issue (at para 1529): (SCC p. 818)

...The power of judicial review is, however, confined not merely to deciding whether in making the impugned laws the Central or State Legislatures

have acted within the four corners of the legislative lists earmarked for them; the courts also deal with the question as to whether the laws are made

in conformity with and not in violation of the other provisions of the Constitution.... As long as some fundamental rights exist and are a part of the

Constitution, the power of judicial review has also to be exercised with a view to see that the guarantees afforded by those rights are not

contravened.... Judicial review has thus become an integral part of our constitutional system and a power has been vested in the High Courts and

the Supreme Court to decide about the constitutional validity of the provisions of statutes. If the provisions of the statute are found to be violative

of any article of the Constitution, which is the touchestone for the validity of all laws, the Supreme Court and the High Courts are empowered to

strike down the said provisions.

21. Even in Indira Nehru Gandhi v. Raj Narain. reported in 1975 Supp SCC 1, while testing the constitutional validity of the provisions, which

sought to oust the jurisdiction of all the High Courts including the Supreme Court in election matters, the Court was required to deal with and

express its views on, the concept of judicial review. While striking down the offending provisions, the decision given by a Five Judges Bench,

delivering the concurring judgment, expressed their views on the concept of judicial review differently by, indeed, taking into account the fact that

the power of judicial review stood excluded by the Constitution in may important areas. Taking note of this feature of Indira Nehru Gandhi (supra)

the Court, in L. Chandra Kumar (supra), observed:

64. In Indira Nehru Gandhi v. Raj Narain a five-Judge Constitution Bench had to, inter alia, test the constitutional validity of the provisions which

ousted the jurisdiction of all courts including the Supreme Court, in election matters. Consequently, the Court was required to express its opinion

on the concept of judicial review. Though all five judges delivered concurring judgments to strike down the offending provision, their views on the

issue of judicial review are replete with variations. Ray, C.J., was of the view that the concept of judicial review, while a distinctive feature of

American Constitutional law, is not founded on any specific article in our Constitution. He observed that judicial review can and has been excluded

in several matters; in election matters, judicial review is not a compulsion. He, however, held that our constitution recognizes a division of the three

main functions of Government and that judicial power, which is vested in the judiciary cannot be passed to or shared by the executive or the

legislature (paras 32, 46, 52) Khanna, J. took the view that it is not necessary, within a democratic set-up, that disputes relating to the validity of

elections be settled by courts of law; he, however, felt that even so the legislature could not be permitted to declare that the validity of a particular

election would not be challenged before any forum and would be valid despite the existence of disputes, (para 207) Mathew, J. held that whereas

in the United States of America and in Australia, the judicial power is vested exclusively in courts, there is no such exclusive vesting of judicial

power in the Supreme Court of India and the courts subordinate to it. Therefore, Parliament could, by passing a law within its competence, vest

judicial power in any authority for deciding a dispute. (paras 322 and 323) Beg, J. held that the power of courts to test the legality of ordinary laws

and constitutional amendments against the norms laid down in the Constitution flows from the ""supremacy of the Constitution"" which is a basic

feature of the Constitution. (para 622) Chandrachud, J. felt that the contention that judicial review is a part of the basic structure and that any

attempt to exclude the jurisdiction of courts in respect of election matters was unconstitutional was too broadly stated. He pointed out that the

Constitution, as originally enacted, expressly excluded judicial review in a large number of important matters. The examples of Articles 136(2) and

226(4)(exclusion of review in laws relating to armed forces), Article 262(2)(exclusion of review in river disputes), Article 103(1)(exclusion of

review in disqualification of Members of Parliament), Article 329(a)(exclusion of review in laws relating to delamination of constituencies and

related matters), were cited for support. Based on this analysis, Chandrachud, J. came to the conclusion that since the Constitution, as originally

enacted, did not consider that judicial power must intervence in the interests of purity of elections, judicial review cannot be considered to be a part

of the basic structure insofar as elections to the legislatures are concerned.

65. The foregoing analysis reveals that the Judges in Indira Gandhi case, all of whom had been party to Kesavananda Bharati case, did not adopt

similar approaches to the concept of judicial review. While Beg, J clearly expressed his view that judicial review was a part of the basic structure

of the constitution, Ray, C.J. and Mathew, J. pointed out that unlike in the American context, judicial power had not been expressly vested in the

judiciary by the Constitution of India, Khanna, J. did not express himself on this aspect, but in view of his emphatic observations in Kesavananda

Bharati Case 10, his views on the subject can be understood to have been made clear. Chandrachud, J. pointed out that the constitution itself

excludes judicial review in a number of matters and felt that in election matters, judicial review is not necessary requirement.

22. It is, no doubt, true that the majority view in Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others, did not, as correctly pointed

out by Mr. Somik Das, hold that the concept of judicial review forms part of the basic structure of the Constitution and it was only the judgment of

Bhagawati, J. in Minerva Mills (supra), which reflected that the power of judicial review is an integral part of our constitutional scheme and forms

part of the basic structure thereof. The Court in L. Chandra Kumar (supra) was not unmindful of this glaringly noticeable aspect of the case of

Minerva Mills (supra). Naturally, therefore, while dealing with this aspect of the matter, the Court, in L. Chandra Kumar (supra) observed as

follows:

66. In Minerva Mills v. Union of India, a five-Judge Constitution Bench of this Court had to consider to validity of certain provisions of the

Constitution (42nd Amendment) Act, 1976 which, inter alia, excluded judicial review: The judgment for the majority, delivered by Chandrachud,

C.J. for four Judges, contained the following observations: (SCC at p. 644, para 21).

...Our constitution is founded on a nice balance of power among the three wings of the State, namely, the Executive, the Legislature and the

Judiciary. It is the function of the Judges, may their duty, to pronounce upon the validity of laws. If courts are totally deprived of that power, the

fundamental rights conferred upon the people will become a mere adornment because rights without remedies are as writ in water. A controlled

Constitution will then become uncontrolled.

(Emphasis supplied)

67. The majority judgment held the impugned provisions to be unconstitutional. While giving reasons in support, Chandrachud, C.J. stated as

follows: (SCC p. 660, para 73)

...It is four the courts to decide whether restrictions are reasonable and whether they are in the interest of the particular subject. A part from other

basic dissimilarities, Article 31-C takes away the power of judicial review to an extent which destroys even the semblance of a comparison

between its provisions and those of Clauses (2) to (6) of Article 19. Human ingenuity, limitless though it may be, has yet not devised a system by

which the liberty of the people can be protected except through the intervention of courts of law.

68. It may, however, be noted that the majority in Minerva Mills did not hold that the concept of judicial review was, by itself, part of the basic

structure of the Constitution. The judgment of Chandrachud, C.J. in the Minerva Mills case must be viewed in the context of his judgment in Indira

Gandhi case, where he had stated that the Constitution, as originally enacted, excluded judicial review in several important matters.

69. In his minority judgment in Minerva Mills case, Bhagwati, J. held as follows (SCC pp. 677-78, para 87)

...The constitution has, therefore, created an independent machinery for resolving these disputes and this independent machinery is the judiciary

which is vested with the power of judicial review to determine the legality of executive action and the validity of legislation passed by the legislature.

It is the solemn duty of the judiciary under the Constitution to deep the different organs of the State such as the executive and the legislature within

the limits of the power conferred upon them by the Constitution. This power of judicial review is conferred on the judiciary by Articles 32 and 226

of the Constitution. The judiciary is the interpreter of the constitution and to the judiciary is as signed the delicate task to determine what is the

power conferred on each branch of government, whether it is limited, and if so, what are the limits and whether any action of that branch

transgresses such limits. It is for the judiciary to uphold the constitutional values and to enforce the constitutional limitations. That is the essence of

the rule of law, which inter alia requires that the exercise of powers by the government whether it be the legislature or the executive or any other

authority, be conditioned by the Constitution and the law''. The power of judicial review is an integral part of our constitutional system.... The

power of judicial review...is unquestionably...part of the basic structure of the Constitution. Of course, when I say this I should not be taken to

suggest that effective alternative institutional mechanisms or arrangements for judicial review cannot be made by Parliament.

(Emphasis added)

23. Having noticed the above aspects of the decisions in Kesavananda Bharati (supra), Indira Nehru Gandhi (supra) and Minerva Mills (supra),

the Court in L. Chandra Kumar (supra) took into account the other authorities, which threw light on the question as to whether the power of

judicial review forms part of the basic structure of the Constitution or not. Having considered all the relevant authorities on the subject, the Court

expressed in L. Chandra Kumar (supra) thus:

78. The legitimacy of the power of courts within constitutional democracies to review legislative action has been questioned since the time it was

first conceived. The Constitution of India, being alive to such criticism, as, while conferring such power upon the higher judiciary, incorporated

important safeguards. An analysis of the manner in which the framers of our constitution incorporated provisions relating to the judiciary would

indicate that they were very greatly concerned with security the independence of the judiciary. These attempts were directed at ensuring that the

judiciary would be capable of effectively discharging its"" wide powers of judicial review. While the constitution confers the power to strike down

laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement

age of Judges as well as the mechanism for selecting Judges to the superior courts. The inclusion of such elaborate provisions appears to have been

occasioned by the belief that, armed by such provisions, the superior courts would be insulated from any executive or legislative attempts to

interfere with the making of their decisions. The Judges of the superior courts have been entrusted with the task of upholding the Constitution and

to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the constitution is

maintained and that the legislature and the executive do not in the discharge of their functions, transgress constitutional limitations. It is equally their

duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of

legal correctness and judicial independence. The constitutional safeguards, which ensure the independence of the Judges of the superior judiciary,

are not available to the Judges of the subordinate judiciary or to those two man tribunals created by ordinary legislations. Consequently, Judges of

the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional

interpretation. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under Article 226 and in this

Court under Article 32 of the constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily,

therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

79. We also hold that the power vested in the high courts to exercise judicial superintendence over the decisions of all courts and tribunals within

their respective jurisdictions is also part of the basic structure of the constitution. This is because a situation where the High Courts are divested of

all other judicial functions apart from that of constitutional interpretation is equally to be avoided.

****

****

90. We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the

power of judicial review, the jurisdiction of the High Courts under Articles 226/227 cannot wholly be excluded. It has been contended before us

that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict

themselves to handling matters where constitutional issue are not raised. We cannot bring ourselves to agree to this proposition as that may result in

splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional

issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover,

even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service

law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the constitution. To hold that the Tribunals have no

power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold

that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of

the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review

of legislative action vested in the High Courts under Article 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through

the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits, which will be of use to it in

finally deciding the matter.

24. In the face of the decision, which, eventually, the Constitution Bench in L. Chandra Kumar has arrived at, one can no longer bear any doubt

that the power of judicial review under Article 226 and the power of superintendence under Article 227 form part of the basic structure of the

Constitution and the Parliament, while having the power to amend the Constitution under Article 368, cannot take away or abridge the power so

conferred on the High Court under Articles 226/227. When no constitutional amendment restricting the power of judicial review and/or

superintendence under Articles 226 and/or 227 of the Constitution is possible, the question of a statute, such as the M.V. Act, limiting restricting

and/or abolishing and/or setting at naught the power of judicial review conferred on the High Court under Article 226 and/or the power of

superintendence vested in the High Court by Article 227 cannot arise at all, though the resort to such powers cannot be arbitrary and must be

exercised within the contours of the settled principles, which the Courts have evolved.

25. While dealing with the above aspect of the matter, it is imperative to note that the majority judgment in Keshavananda Bharati (supra) did not

give any indication at all that what had been enlisted therein as forming part of the basic structure of the Constitution were exhaustive and nothing

else formed or could ever be held to form part of the basic structure of the Constitution. Far from this what were culled down as forming part of

the basic structure of the Constitution were inclusive in nature and not exclusive or exhaustive. It was, therefore, open to the Apex Court to add to

what the majority had already held as forming part of the basic structure of the Constitution. It is, in this context, that the decision in L. Chandra

Kumar (supra) needs to be viewed. No wonder, therefore, that it was in S.R. Bommai and others Vs. Union of India and others etc. etc., that a 9

Judges Constitution Bench, for the first time, included secularism as one of the basic features of the Constitution and laid down that a Promulgation

issued by the President, under Article 356 on the advice of the Council of Ministers, is amenable to judicial review, at least, to the extent of

examining whether the conditions precedent for the issuance of Promulgation have been satisfied or not. In SR Bommai (supra), the Apex Court, in

no uncertain words, held that judicial review forms part of the basic structure of the constitution. Moreover, what, most prominently, attracts our

attention is that in Keshavananda Bharati (supra), the land reforms enactments were placed in the Ninth Schedule to the Constitution in order to

put the same beyond the reach of the power of judicial review. However, the Apex Court went into determining the constitutionality of the

legislative enactments, which had been placed in the Ninth Schedule, and struck down some of the provisions thereof, which were found to be not

sustainable. Thus the fact that even in Keshavananda Bharati (supra), the Court acknowledged, albeit indirectly, the existence of power of judicial

review as an essential feature of the constitution cannot be doubted, for had the Court not been vested with the power of judicial review, the

question of interfering with the legislative pieces of enactments, which had been included in the Ninth Schedule to the Constitution would not have

arisen.

26. Coupled with the above, when the Apex Court, after considering its earlier decisions including the decision rendered by a larger Bench,

explains its earlier decision or interprets its earlier decision of even its larger Bench such an interpretation of the earlier decisions given by the Apex

Court, in its subsequent decision, will be binding on the High Court. Viewed from this angle, when the Constitutional Bench in L. Chandra Kumar

(supra) lays down as to what Keshavananda Bharati (supra) had conveyed and what formed part of the basic structure of the Constitution, this

becomes determinative of the law on the issue and such a later decision is the law declared by the Supreme Court under Article 141 and will be

binding on all the Courts including this Court.

27. At any rate, in the face of the decision in L Chandra Kumar (supra) that the power of judicial review and superintendence, contained in Article

226 and 227 forms part of the basic structure of the Constitution, it is no longer open to this Court to consider and/or hold that the power

conferred on the High Court under Articles 226 and/or 227 does not form part of the basic structure of the Constitution.

28. In other words, in the face of the decision in L. Chandra Kumar (supra) and until the time the decision in L. Chandra Kumar (supra) is held to

be not binding, there can be no escape from the conclusion that the powers conferred on the High"" Court under Articles 226 and 227 form part of

the basic structure of the Constitution and this power cannot be taken away or abridged by constitutional amendments, far less by means of

enactments. This does not mean, I must hasten to add, that the High Court can arbitrarily exercise its powers under Articles 226 and/or 227. What

shall be the parameters of the powers of the High Courts under Articles 226 and 227 is altogether a different question.

29. I, therefore, answer the question No. 3 in the affirmative.

30. In the light of the above answer to the question No. 3 the question No. 2 needs to be, now, answered.

31. I have already indicated hereinabove that the question No. 2 was also raised in Oriental Insurance Co. (supra) and this Court, I may point out,

concluded therein as follows:

49. I am unable to locate, in the decision of Sadhana Lodh (Supra), any observation by the Apex Court to the effect that in view of the limited right

of appeal provided to an insurer u/s 149(2) of the M.V. Act, interference with such an award is impermissible even if recognized principles for

interference with such an award exists, for instance, when the Tribunal has acted without jurisdiction or in excess of its jurisdiction or in flagrant

disregard of law or rules or procedure or in violation of the principles of natural justice occasioning failure of justice. Undoubtedly, a mere wrong

decision by a Tribunal which has the jurisdiction to decide, cannot be a ground for interference under Articles 226 and/or 227. The Apex Court

observed in Sadhana Lodh (supra) that a mere wrong decision without anything more, is not enough to attract jurisdiction of High Court under

Article 226 of the Constitution. The expression without anything more'' used in Sadhana Lodh (supra), is to my mind, of great significance. The

decision in Sadhana Lodh (supra) has to be read in the background of the authorities discussed hereinbefore and when read in this light, it clearly

follows that what the Apex Court has laid down in Sadhana Lodh (supra) is that a Writ Court cannot convert itself into a Court of appeal and

thereby enlarge the limited grounds on which the award can be impugned in the appeal by an insurer, but at the same time if the conditions

precedent for exercise of powers under Article 226/227 exists, the same cannot be ignored merely because the State has not provided an

unlimited right of appeal, for doing so would amount to accepting a proposition that by providing a right of appeal, limited or otherwise the

Legislature can taken away the jurisdiction of the High Court under Article 226 and/or 227. No doubt, the writ jurisdiction shall be exercised, as

laid down in Mafatlal Industries Ltd. (supra) to effectuate the rule of law and not to abrogate it and while the powers under Article 226 cannot be

circumscribed by any enactment, the legislative intent, as evidenced by the enactment, must be given due regard and the exercise of jurisdiction

under Article 226 has to be consistent with the provisions of the enactment and not contrary thereto. In short, thus, when the M.V. Act prescribes

a complete scheme for the relief of granting of compensation and circumscribes, with the help of the provisions, such as, Section 149(2), the

insurer"s light of appeal, the High Court cannot, in exercise of its jurisdiction under Article 226 and/or 227, convert itself into a Court of appeal

and determine the correctness of the decision; but when the Tribunal oversteps its jurisdiction or indulges in arbitrariness in granting compensation

or it acts in denial of the principles of natural justice or acts without jurisdiction or in flagrant disregard of the law or the procedure occasioning

thereby failure of justice, interference in exercise of Certiorari jurisdiction will not only be possible, but would become imperative, for, non-

interference even in such cases, where the exercise of powers under Articles 226 and/or 227 is warranted, will amount to abdicating by the High

Court its authority under Articles 226/227, which forms the basic structure of the Constitution. Such a course, as suggested by learned Counsel for

the Respondents, would be contrary to the established principles governing the exercise of writ jurisdiction and can not, in any way, be described

to be in tune with what Sadhana Lodh (supra) lays down.

32. In Oriental Insurance Co. (supra), this Court further observed as follows:

54. One can, thus, multiply the examples, when the High Court may, notwithstanding the limited of right of appeal provided to the insurer u/s

149(2), have to interfere in certiorari jurisdiction in order to keep the Tribunal within the bounds of law. What the High Court cannot do is to

convert itself into a court of appeal, but it will be too much to say that under no circumstances, the High Court under Articles 226/227 can interfere

with an award passed by a Tribunal even if the award be a nullity in the eyes of law or is completely perverse or even when the award passed is

one, which cannot stand most reluctant judicial scrutiny.

33. In other words, what this Court concluded in Oriental Insurance Co. (supra) is that an award, which is appealable u/s 173 of the MV Act, is

not wholly outside the purview of the powers of judicial review and though, in an appropriate case, the High Court may exercise its powers under

Articles 226 and/or 227 of the Constitution, it cannot interfere with such an award in a manner, which will enlarge the limited grounds of appeal,

which the statute provides to the insurer, and that while an award, appealable u/s 173 of the MV Act, is not beyond the reach of Articles 226

and/or 227 of the Constitution the exercise of power of judicial review and/or of superintendence cannot be resorted to by the High Court to

defeat the legislative intendments of the MV Act, for, the power has to serve the ends of law and not abrogate them. (See Mafatlal Industries Ltd.

and Others Vs. Union of India (UOI) and Others,

34. In short, I hold and conclude that Sadhana Lodh (supra) does not completely bar the power of judicial review and/or superintendence of the

High Courts conferred by Article 226 and/or 227 of the Constitution of India. The question No. 2 is, therefore, answered in the affirmative.

35. I, however, clarify that the writ petitions, which have been enlisted above, though maintainable, are being disposed of, on merit, by independent

orders.