

CASE DETAILS

RAJNISH KUMAR RAI

v.

UNION OF INDIA & ORS.

(Special Leave Petition (Civil) No. 20054 of 2023)

SEPTEMBER 06, 2023

[ANIRUDDHA BOSE AND BELA M. TRIVEDI, JJ.]

HEADNOTES

Issue for consideration: High Court of Gujarat at Ahmedabad whether justified in dismissing the writ petition filed by the petitioner, relying on Union of India v. Alapan Bandyopadhyay [2022] 16 SCR 259 and holding that it lacked territorial jurisdiction to entertain the said petition which challenged the order of the Principal Bench of the Central Administrative Tribunal, Delhi rejecting the petitioner's application for transfer of the proceeding from CAT, Hyderabad Bench to the Ahmedabad Bench.

Judicial Propriety – Ratio laid down by coordinate Bench in the earlier judgment cannot be ignored merely because it has been referred to a larger Bench – Plea of the petitioner that law laid down in Alapan Bandyopadhyay case which was relied on by High Court has been referred to a larger Bench in the case of Union of India vs. Sanjiv Chaturvedi [2023] 2 SCR 59:

Held: Judicial propriety does not permit ignoring the ratio laid down by the coordinate Bench in the case of Alapan Bandyopadhyay as no decision has come as yet from the larger Bench on the point of territorial jurisdiction of the High Court in a similar context – If this Court were to take a different view, the only course open would have been to refer the petition to the Hon'ble the Chief Justice for being adjudicated by a larger Bench, as has been done in the case of Sanjiv Chaturvedi – No argument has been raised that the decision in the case of Alapan Bandyopadhyay is per incurium – Further, even on merits the jurisdiction u/Article 136 cannot be invoked in the present matter – It is not the case of the petitioner that the Tribunal, which is hearing the matter at present is without jurisdiction – He himself

had instituted the application in the Tribunal at Hyderabad – His submission is that the Bench of the Tribunal at Ahmedabad also has jurisdiction to hear the case, as at present he is residing in Ahmedabad after retirement and if his transfer plea is not accepted, it would cause inconvenience and undue hardship – The matter has reached final stage of hearing in the Tribunal at Hyderabad and that is the main reason for which the Principal Bench of the Tribunal rejected the petitioner’s transfer application – No flaw in such reasoning – Constitution of India – Articles 136, 142. [Paras 4, 6]

LIST OF CITATIONS AND OTHER REFERENCES

Union of India v. Alapan Bandyopadhyay (2022) 3 SCC 133 : [2022] 16 SCR 259 – relied on.

Union of India v. Sanjiv Chaturvedi [2023] 2 SCR 59 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 20054 of 2023.

From the Judgment and Order dated 20.04.2022 of the High Court of Gujarat at Ahmedabad in SCA No.6466 of 2022.

Appearances:

Yadav Narender Singh, Adv. for the Petitioner.

Ms. Aishwarya Bhati, ASG, K. Parmeshwar, Rajat Nair, Ms. Swati Ghildiyal, Ms. Poornima Singh, Rustam Singh Chauhan, Adit Khorana, Arvind Kumar Sharma, Advs. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT

JUDGMENT

ANIRUDDHA BOSE, J.

Delay condoned.

2. Heard learned counsel for the parties.

3. The proceeding of which transfer is asked for, was instituted by the petitioner himself before the Central Administrative Tribunal, Hyderabad and it has reached final stage of hearing. The petitioner's application for transfer of the proceeding to the Ahmedabad Bench of the same Tribunal was rejected by the Principal Bench of the Central Administrative Tribunal, Delhi by an order passed on 04.02.2022. The petitioner questioned the legality of the said order before the High Court of Gujarat at Ahmedabad invoking its jurisdiction under Article 226 of the Constitution of India. But his plea was not accepted by the High Court relying on a judgment of this Court in the case of **Union of India -vs- Alapan Bandyopadhyay** [(2022) 3 SCC 133]. The High Court relied on the following passage from the case of *Alapan Bandyopadhyay* (supra) in dismissing the writ petition, holding that it lacked territorial jurisdiction to entertain that petition. It has been, inter-alia, held in the case of **Alapan Bandyopadhyay** (supra):-

“41. The undisputed and indisputable position in this case is that the WPCT No. 78 of 2021 was filed to challenge the order dated 22-10-2021 in Personnel, Public Grievances and Pensions v. Alapan Bandyopadhyay [Personnel, Public Grievances and Pensions v. Alapan Bandyopadhyay, 2021 SCC OnLine CAT 3242] of the Central Administrative Tribunal, Principal Bench at New Delhi, (by the Chairman of the Tribunal in exercise of the power under Section 25 of the Act sitting at the Principal Bench) transferring OA No. 1619 of 2021 to its files. On applying the said factual position to the legal exposition in L. Chandra Kumar case [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] it is crystal clear that the Principal Bench of the Central Administrative Tribunal at New Delhi, which passed the order transferring OA No. 1619 of 2021 vide order in Personnel, Public Grievances and Pensions v. Alapan Bandyopadhyay [Personnel, Public Grievances and Pensions v. Alapan Bandyopadhyay, 2021 SCC OnLine CAT 3242] falls within the territorial jurisdiction of the High Court of Delhi at New Delhi.

42. Needless to say that the power of judicial review of an order transferring an original application pending before a Bench of the Tribunal to another Bench under Section 25 of the Act can be judicially reviewed only by a Division Bench of the High Court within whose

territorial jurisdiction the Bench passing the same, falls. In fact, the decision in Bhavesh Motiani case [Bhavesh Motiani v. Union of India, 2019 SCC OnLine Del 11541], relied on by the respondent is also in line with the said position as in that case also, as against the order of transfer passed under Section 25 of the Act by the Principal Bench of the Central Administrative Tribunal at New Delhi writ petition was filed by the aggrieved party only before the High Court of Delhi. This is evident from the very opening sentence of the said judgment, which reads thus : (Bhavesh Motiani case [Bhavesh Motiani v. Union of India, 2019 SCC OnLine Del 11541] , SCC OnLine Del para 1)

“1. The present petition has been filed being aggrieved by order dated 30-11-2018 [Ministry of Commerce v. Bhavesh Motiana, 2018 SCC OnLine CAT 24765] passed by the Central Administrative Tribunal, Principal Bench, New Delhi (“the Tribunal”), by which OA No. 421 of 2018 pending before the Ahmedabad Bench has been transferred to the Principal Bench of the Tribunal.”

43. In the instant case, the High Court at Calcutta has usurped jurisdiction to entertain the writ petition viz. WPCT No. 78 of 2021, challenging the order passed by the Central Administrative Tribunal, New Delhi, in Personnel, Public Grievances and Pensions v. Alapan Bandyopadhyay [Personnel, Public Grievances and Pensions v. Alapan Bandyopadhyay, 2021 SCC OnLine CAT 3242] , even after taking note of the fact that the Principal Bench of the Tribunal does not lie within its territorial jurisdiction.”

4. Learned counsel appearing for the petitioner has brought to our notice a coordinate Bench decision of this Court in the case of **Union of India vs. Sanjiv Chaturvedi** [(2023) 2 SCR 59] in which the point of law laid down in the earlier judgment passed by this Court in the case of **Alapan Bandyopadhyay** (supra) has been referred to a larger Bench. But so far as this Bench is concerned, we do not think judicial propriety permits ignoring the ratio laid down by the coordinate Bench in the case of **Alapan Bandyopadhyay** (supra) as no decision has come as yet from the larger Bench on the point of territorial jurisdiction of the High Court in a similar context. If we were to take a different view, the only course open for us

would have been to refer the petition to the Hon'ble the Chief Justice for being adjudicated by a larger Bench, as has been done in the case of **Sanjiv Chaturvedi** (supra). No argument has been raised before us that the decision in the case of **Alapan Bandyopadhyay** (supra) is per incurium.

5. We have examined point involved in this petition independent of the ratio laid down in the case of **Alapan Bandyopadhyay** (supra) and tested the petitioner's plea for transfer on merit. We have done so with the objective that in case we found any outstanding legal merit in petitioner's plea for transfer of the case to Ahmedabad, we could have directed so in exercise of our jurisdiction under Article 142 of the Constitution of India.

6. But so far as the plea of the petitioner is concerned, it is not a case of the petitioner that the Tribunal, which is hearing the matter at present is without jurisdiction. He himself had instituted the application in the Tribunal at Hyderabad. His submission is the Bench of the Tribunal at Ahmedabad also has jurisdiction to hear the case, as at present he is residing in Ahmedabad after retirement. His submission is that in the event his transfer plea is not accepted, it would cause inconvenience and undue hardship. It is on this ground he had applied for transfer of his case from the Bench of the Tribunal at Hyderabad to the Bench at Ahmedabad. The matter has reached final stage of hearing in the Tribunal at Hyderabad. That appears to be the main reason for which the Principal Bench of the Tribunal has rejected the petitioner's transfer application. We do not find any flaw in such reasoning. In such circumstances, we decline to invoke our jurisdiction under Article 136 of the Constitution of India in the present matter.

7. The special leave petition is, accordingly, dismissed.

8. Pending application(s), if any, shall stand disposed of.