Union Of India vs Alapan Bandyopadhyay on 6 January, 2022

Author: A.M. Khanwilkar

Bench: C.T. Ravikumar, A.M. Khanwilkar

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.197 OF 2022
(Arising out of SLP(C)No.18338/2021)

Union of India — Appellant

VERSUS

Alapan Bandyopadhyay — Respondent

J U D G M E N T

C.T. RAVIKUAMR, J.

1. Leave granted.

2. A legal conundrum calls for resolution in this case. The seminal question that created it is:

> 'whether the bundle of facts that constitute the cause of action for filing an Original Application under Section 19 of the Administrative Tribunals Act, 1985 (for short 'the Act') and determinative of the place of its filing would remain as the decisive factor in case such an application is subsequently transferred from the Bench where it was filed to another Bench of the Tribunal falling under the territorial jurisdiction of another High Court, to ascertain the jurisdictional High Court to exercise the power of judicial review qua the order of transfer passed by the Chairman of the Central Administrative Tribunal at New Delhi in exercise of power under Section 25 of the Act'.

3. The Appellant assails the final judgment and order dated 29.10.2021 passed by the High Court at Calcutta in WPCT No.78/2021 whereby the High Court set aside the order dated 22.10.2021 passed by the Central Administrative Tribunal, Principal Bench (New Delhi) in P.T.No.215/2021 transferring O.A.No.1619/2021, filed by the respondent herein, from Kolkata Bench to its files at the

Principal Bench (New Delhi). In fact, order in P.T.No.215/2021 was passed by the Chairman of the Tribunal in exercise of the power under Section 25 of the Act. The respondent herein, who was the then Chief Secretary of the State of West Bengal (since superannuated as an IAS officer), filed O.A.No.1619/2021 before the Kolkata Bench of the Central Administrative Tribunal challenging the disciplinary proceedings initiated against him vide charge memo dated 16.06.2021 alleging failure to attend a review meeting chaired by the Hon'ble the Prime Minister of India on 28.05.2021 for assessing the loss of life, damage to property and infrastructure caused by the cyclonic storm 'YAAS'. He was charged thereunder for failure to maintain absolute integrity and devotion to duty and for exhibiting conduct unbecoming of a public servant. Pending consideration of the stated O.A. the Appellant herein moved a Transfer Petition being P.T.No.215/2021 under Section 25 of the Act, before the Principal Bench of the Tribunal at New Delhi seeking its transfer from the Kolkata Bench to the Principal Bench. That petition was allowed by the Chairman of the Tribunal, sitting at the Principal Bench and the challenge of which ultimately led to the passing of the impugned final judgment and order dated 29.10.2021 by the High Court. Since we are confining the consideration only on the question as to which is the jurisdictional High Court having the power for judicial review as relates the order of transfer passed in P.T.No.215/2021 it is un-essential to refer to, in detail, the various contentions raised in the stated O.A. to challenge the disciplinary proceedings as also the contentions raised before the High Court in WPCT No.78/2021 to challenge the correctness of the stated order of transfer. In troth, consideration of correctness or otherwise of the decision of the High Court on merits would become inept if the High Court at Calcutta is found lacking jurisdiction to entertain the challenge against the order in P.T.No.215/2021 passed under Section 25 of the Act.

4. To properly consider this appeal, it is only appropriate to refer to Section 25 of the Act and Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987 (for brevity, the 'Procedure Rules'). They read thus: -

> "Section 25 of the Administrative Tribunals Act, 1985 :
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> 25. Power of Chairman to transfer cases from one Bench to another.- On the application of any of the parties and after notice to the parties, and after hearing such of them as he may desire to be heard, or on his own motion without such notice, the chairman may transfer any case pending before one Bench, for disposal, to any other Bench." "Rule 6 of the Central Administrative Tribunal (Procedure) Rules, 1987 :
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> 6. Place of filing applications.- (1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction –
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> (i) the applicant is posted for the time being, or
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> (ii) the cause of action, wholly or in part, has arisen;

Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter.

(2) Notwithstanding anything contained in sub-rule (1) persons who has ceased to be in service by reason of retirement, dismissal or termination of service may be at his option file an application with the Registrar of the Bench within whose jurisdiction such person is ordinarily residing at the time of filing of the application."

5. There is no dispute regarding the power of the Chairman to transfer an Original Application pending before one Bench of the Tribunal to another bench, under Section 25 of the Act. A perusal of the said provision would reveal that a party to any Application before any Bench of the Central Administrative Tribunal is statutorily entitled to make a separate application before the Chairman of the Central Administrative Tribunal for such a transfer. Upon transfer of an Original Application pending before a particular Bench of the Tribunal, lying within the territorial jurisdiction and power of judicial superintendence of any particular High Court other than High Court of Delhi at Delhi, to the Principal Bench at New Delhi lying within the territorial jurisdiction of High Court of Delhi, the question of maintainability may arise in case of a challenge against the order of transfer. Yet another High Court may emerge in the picture if the Chairman, sitting at the Principal Bench transferred the O.A. not to the file of the Principal Bench, but to another Bench lying within the territorial jurisdiction of yet another High Court. It is to be noted that the Chairman of the Tribunal can also pass an order of transfer of an Original Application while sitting at any other Bench than the Principal Bench. This possibility cannot be ruled out in view of the provisions under Section 5(4)(a) of the Act, which reads thus:-

> "S.5. Composition of Tribunals and Benches thereof.- (1)... (2)... (3)... (4) Notwithstanding anything contained in sub-Section (1), the Chairman –
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> (a) may, in addition to discharging the functions of the Judicial Member or the Administrative Member of the Bench to which he is appointed, discharge the functions of the Judicial Member or, as the case may be the Administrative Member, of any other Bench;"

6. The question of jurisdictional issue may get complicated further in case some of the applicants who joined together to file a single Original Application under Section 19 of the Act before a particular Bench of the Tribunal have chosen to challenge the order of its transfer, if passed under section 25 of the Act, before different High Courts, based on their places of residence. Occurrence of such a situation is possible and cannot be ruled out going by the provisions under Rule 4(5)(a) and (b) of the Procedure Rules, which read thus:

> "Rule 4. Procedure for filing applications. -
> 4(5) (a) Notwithstanding anything

contained in sub-rules (1) to (3) the Tribunal may permit more than one person to join together and file a single application if it is satisfied, having regard to the cause and the nature of relief prayed for that they have a common interest in the matter.

4(5) (b) Such permission may also be granted to an Association representing the persons desirous of joining in a single application provided, however, that the application shall disclose the class/grade/categories or persons on whose behalf it has been filed [provided that at least one affected person joins such an application].” All the above aspects have to be borne in mind while considering the question that calls for resolution in this appeal. Yet another important aspect may also has to be borne in mind, idest that the cause of action for filing an Original Application under section 19 of the Act to redress any grievance and the cause of action for challenging an order of transfer of such an application from the Bench where it was filed and pending, to another Bench are different and distinct. The place for filing an Original Application against any order under section 19 would depend upon the bundle of facts constituting the cause of action which ultimately culminated in the said order sought to be impugned. Explanation to section 19(1) defines the meaning of the word ‘order’ for the purposes of the said section. On the other hand, the cause of action for challenging the order of transfer/order declining the prayer for transfer is nothing but an order passed in the independent application for transfer of pending Original Application from the files of that particular Bench of the Tribunal where it was filed to another Bench in the invocation of or disinclination to invoke, the power under Section 25 of the Act.

7. We have heard Shri Tushar Mehta, learned Solicitor General, for the appellant and learned Senior Advocate Dr. Abhishek Manu Singhvi appearing for the respondent. Both sides relied on various authorities to drive home their respective stand as relates the impugned judgment. The learned Solicitor General contended that a challenge against the order passed in P.T.No.215/2021 by the Central Administrative Tribunal, Principal Bench at New Delhi, was maintainable only before the High Court of Delhi as the Principal Bench of the Tribunal lies within its territorial jurisdiction. To buttress the said contention the judgment of a Constitutional Bench of this Court in L. Chandra Kumar vs. Union of India, reported in (1997) 3 SCC 261 is relied on. It was held therein that the power vested in the High Court to exercise judicial superintendence over the decisions of all courts and Tribunals within the respective jurisdictions is also part of the basic structure of the constitution. Furthermore, it was held that the decisions of Tribunals would be subject to the High Court’s Writ jurisdiction under Article 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls. The learned Solicitor General also referred to Section 5(7) of the Act which provides that subject to the other provisions of the Act, Benches of the Central Administrative Tribunal shall ordinarily sit at New Delhi (which shall be known as the Principal Bench), Allahabad, Kolkata, Madras, New Bombay and at such other places as the Central Government may, by notification, specify, to support the contention that High Court at Calcutta did not have jurisdiction to exercise judicial review of the orders in P.T.No.215/2021. Relying on the decision in Union of India vs. A. Shainamol, IAS and Anr., reported in (2021) SCC Online SC 962, it is contended that the mere residence of the Applicant in a certain place would not amount to cause of action conferring jurisdiction upon the Bench of the Tribunal located at that place. Indubitably, this contention is relevant only for challenging the maintainability of an Original Application before any particular Bench of the Tribunal. The learned Solicitor General relied on the decision of this Court in JK Industries Ltd. & Anr. vs. Union of India & Ors., reported in (2007) 13 SCC 673 to contend that Rule 6 of the Procedural Rules ought not to have been interpreted by the High Court so as to take away Chairman’s jurisdiction to transfer a case under Section 25 of the Act as the cardinal principle of interpretation is that a rule made under a statute

could not override or supersede a provision of the parent statute itself. According to us the said decision and the contention founded on the said decision are relevant only for the purpose of deciding the correctness of the order of transfer passed by the Principal Bench of the Tribunal in exercise of the power under Section 25 of the Act and not for deciding the jurisdictional High Court qua the order in P.T.No.215/2021.

8. The Appellant also got a grievance that the High Court made some harsh or disparaging remarks in the impugned judgment against the Chairman of the Tribunal. The learned Solicitor General submitted that they were unsolicited and relied on various decisions to stress upon the requirement of their expunction. Nevertheless, we think it unnecessary to delve into all such contentions based on such decisions as Dr. Abhishek Manu Singhvi, learned Senior Counsel appearing for the respondent, fairly submitted that he would not contest on that issue and left it to us to decide. Obviously, the High Court found undue haste in the matter of disposal of P.T.No.215/2021 and that also persuaded the High Court to make such scathing observations and remarks in fact, against the Principal Bench of the Tribunal. But then, a perusal of the materials on record would reveal that WPCT No.78/2021 filed before the High Court that culminated in the impugned judgment was also passed with almost equal speed. That apart, both the order in P.T.No.215/2021 and the final judgment and order in WPCT No.78/2021 were passed, respectively, by the Tribunal and the High Court, after hearing both parties. The fact that the impugned judgment contain observations and remarks amounting to disparagement and as such, scathing in effect is not in dispute. We do not think it necessary to reproduce them in this judgment in the stated circumstances. However, contextually it will be apposite to refer to paragraphs 11 to 13 of the decision of this Court in Braj Kishore Thakur v. Union of India (AIR 1997 SC 1157). It was held therein thus:

> "11. No greater damage can be caused to the administration of justice and to the confidence of people in judicial institutions when Judges of higher Courts publicly express lack of faith in the subordinate Judges. It has been said, time and again, that respect for judiciary is not in hands by using intemperate language and by casting aspersions against lower judiciary. It is well to remember that a Judicial Officer against whom aspersions are made in the judgment could not appear before the higher Court to defend his order. Judges of higher Courts must, therefore, exercise greater judicial restraint and adopt greater care when they are tempted to employ strong terms against lower judiciary.
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> 12. A quarter of a century ago Gajendragadkar, J. (as he then was) speaking for a Bench of three Judges of this Court, in the context of dealing with the strictures passed by High Court against one of its Subordinate Judicial Officers (Suggesting that his decision was based on extraneous considerations) stressed the need to adopt utmost judicial restraint against using strong language and imputation of corrupt motives against lower judiciary more so "because the Judge against whom the imputations are made has no remedy in law to vindicate his position" [Ishwari Prasad Mishra v.

Mohammad Isa, (1963) 3 SCR 722:

(AIR 1963 SC 1728)]. This Court had to repeat such words on

subsequent occasions also. In K.P. Tiwari v. State of M.P., AIR 1994 SC 1031, this Court came across certain observations of a learned Judge of the High Court casting strictures against a Judge of the subordinate judiciary and the Court used the opportunity to remind all concerned that using intemperate language and castigating strictures at the lower levels would only cause public respect in judiciary to dwindle. The following observations of this Court need repetition in this context:

> "The higher Courts every day come across orders of the lower Courts which are not justified either in law or in fact and modify them or set them aside. That is one of the functions of the superior Courts. Our legal system acknowledges the fallibility of the Judges and hence provides for appeals and revisions. A Judge tries to discharge his duties to the best of his capacity. While doing so, sometimes, he is likely to err..... it has also to be remembered that the lower judicial officers mostly work under a charged atmosphere and are constantly under a psychological pressure with all the contestants and their lawyers almost breathing down their necks more correctly up to their nostrils. They do not have the benefit of a detached atmosphere of the higher Courts to think coolly and decide patiently. Every error, however, gross it may look, should not, therefore, be attributed to improper motive."

> 13. Recently, we had to say the same thing though in different words in Kashi Nath Roy v. State of Bihar (1996) 4 JT (SC) 605: (1996 AIR SCW 2098) in a similar situation. We then said thus (Para 7 of AIR):

> "It cannot be forgotten that in our system, like elsewhere, appellate and revisional Courts have been set up on the pre-supposition that lower Courts would in some measure of cases go wrong in decision-

> making, both on facts as also on law, and they have been knit-up to correct those orders. The human element, in justicing being an important element, computer-like functioning cannot be expected of the Courts: however, hard they may try and keep themselves precedent- trodden in the scope of discretions and in the manner of judging.

> Whenever any such intolerable error is detected by or pointed out to a superior Court, it is functionally required to correct that error and may, here and there, in an appropriate case, and in a manner befitting, maintaining the dignity of the Court and independence of judiciary, convey its message in its judgment to the officer concerned through a process of reasoning, essentially persuasive, reasonable, mellow but clear, and result-orienting, but rarely as a rebuke. Sharp reaction of the kind exhibited in the afore-extraction is not in keeping with institutional functioning. The premise that a Judge committed a mistake or an error beyond the limits of tolerance, is no ground to inflict condemnation on the Judge-Subordinate, unless there existed

> something else and for exceptional grounds." On our careful scanning of the circumstances and situations obtained in this case we are persuaded to think that no exceptional ground(s) exists in the case on hand to make scathing and disparaging remarks and observations against the Principal Bench of the Tribunal. At the same time, it is to be noted that the said order was, in fact, passed by the Chairman of the Tribunal on a formal application moved by the appellants herein and after hearing both parties. As a matter of law the Chairman could pass an order of transfer under Section 25 of the Act suo motu. Hence, the said observations and remarks, in troth, ought not to have been made against the Chairman of the Tribunal. To observe sobriety, we say that the remarks made by the High Court were unwarranted, uncalled for and avoidable being sharp reaction on unfounded assumptions. Ergo, we have no hesitation to hold that they were wholly unnecessary for the purpose of deciding the correctness or otherwise of the order of transfer. Hence, they are liable to be expunged.
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> We do so.

9. Now, we will advert to the contentions advanced by Dr. Abhishek Manu Singhvi, learned Senior Counsel for the respondent to support and sustain the impugned judgment and final order in WPCT No.78/2021 whereby the order in P.T.No.215/2021 was set aside. It is submitted that the High Court is justified in entertaining WPCT No.78/2021 as the order of transfer passed in P.T.No.215/2021 fell within its power of judicial superintendence. The further contention is that it could not be said that the power under Section 25 of the Act was taken away solely because Rule 6 of the Procedure Rules was relied on to upturn the order in P.T.No.215/2021. The learned counsel, after drawing our attention to the factual background of the case, contended that the High Court had rightly exercised the power of judicial review and looked into the correctness of the order of transfer passed by the Chairman of the Tribunal (the Principal Bench of the Tribunal) in the invocation of the power under Section 25 of the Act. The said contention is primarily founded on Article 226(2) of the Constitution of India that confers powers on High Court in relation to territories within which the case of action, wholly or in part arises and also on the position settled by this Court in the decisions in Kusum Ingots and Alloys Limited vs. Union of India & Anr. (2004) 6 SCC 254, in Nawal Kishore Sharma vs. Union of India & Ors. (2014) 9 SCC 329 and in Navinchandra N. Majithia vs. State of Maharashtra & Ors. (2000) 7 SCC 647. Compendium of judgments/orders under Section 25 of the Act has also been produced along with the written submissions on behalf of the respondent to support the contentions that the transfer order was illegal, arbitrary, passed in violation of the principals of natural justice and on irrelevant considerations. We may hasten to note that all those judgments/orders, except one, viz., the decision reported in 2019 SCC Online Del 11541 (Bhavesh Motiani vs. Union of India), were passed by the Principal Bench of the Tribunal rejecting applications for transfer of pending Original Applications in the exercise of power under Section 25 of the Act. Hence, they are not significant in deciding the stated moot question. We will refer to in Bhavesh Motiani's case a little later.

10. We have carefully considered the contentions raised on behalf of the respondent by placing reliance on the aforesaid decisions of this Court. In Kusum Ingots' case (supra), the question

involved was "whether the seat of Parliament would be a relevant factor for determining the territorial jurisdiction of a High Court to entertain a writ petition under Article 226 of the Constitution of India when the constitutionality of a Parliamentary Act is under challenge". After referring to the expression "cause of action" for territorial jurisdiction to entertain a writ petition, in terms of Article 226(2) of the Constitution, this Court held thus:

> "18. The facts pleaded in the writ petition must have a nexus on the basis whereof a prayer can be granted. Those facts which have nothing to do with the prayer made therein cannot be said to give rise to a cause of action which would confer jurisdiction on the Court.
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> 19. Passing of a legislation by itself in our opinion does not confer any such right to file a writ petition unless a cause of action arises therefor.
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> 20. A distinction between a legislation and executive action should be borne in mind while determining the said question.
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> 21. A parliamentary legislation when it receives the assent of the President of India and is published in the Official Gazette, unless specifically excluded, will apply to the entire territory of India. If passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner. A writ court, it is well settled, would not determine a constitutional question in a vacuum."

11. In Nawal Kishore's case, the issue concerned was with respect to the jurisdiction of a particular High Court against an authority/person residing outside its territorial jurisdiction. That question was considered with reference to Article 226(2) of the Constitution. It was held that writ could be issued if cause of action wholly or partially had arisen within the territorial jurisdiction of High Court concerned even if the person or authority against whom writ is sought for is located outside its territorial jurisdiction. However, it was held that in order to maintain such a writ petition, the petitioner had to establish that such respondents infringed his legal rights within the limits of the High Court's jurisdiction. In Navin Chandra N. Majithia's case, again the jurisdictional issue was considered with reference to Article 226(2) of the Constitution and held that the High Court concerned would have jurisdiction to entertain a writ petition if any part of the cause of action arose within its territorial limits even though the seat of government or authority or residence of persons against whom direction, order or writ is sought to be issued is not within its territory.

12. On a careful scanning of the aforesaid decisions relied on by the respondent and consideration of the nature of the question that calls for decision in the case on hand and also what we have observed earlier, we find that the above decisions have no applicability for deciding the stated moot question. We will further elaborate the non-applicability of those decisions in the course of further consideration of the matter. We are not dealing with the cause of action for filing O.A.No.1619/2021

before the Kolkata Bench of the Tribunal in this Judgement. Even if the bundle of facts constituting cause of action for filing the said O.A. confers on the Kolkata Bench of the Tribunal the jurisdiction to entertain the same, the question here is whether its transfer from the said Bench to the Principal Bench vide order dated 20.10.2021 in P.T.No.215/2021 by the Chairman of the Central Administrative Tribunal (the Principal Bench) in invocation of powers under Section 25 of the Act falls within the territorial jurisdiction and power of superintendence of the High Court at Calcutta and the fate of the challenge against the order in WPCT No.78/2021 dated 29.10.2021 would depend upon its answer. We may hasten to state that if the challenge in the writ petition was against an order passed by the Kolkata Bench of the Tribunal in O.A.No.1619/2021 there can be no doubt with respect to the jurisdiction of the High Court at Calcutta.

13. Going by Section 25 of the Act, extracted hereinbefore, an independent application for transfer of an Original Application filed and pending before any bench of the Tribunal could be filed and the power to transfer lies with the Chairman. The Section mandates that if such an application is made, notice of it has to be given to the opposite party. At the same time, the Section also provides that on his motion and without any such notice the Chairman could transfer any case pending before one Bench, for disposal, to any other Bench of the Tribunal. Evidently, the said Section recognizes, the fundamental principles of justice and fair play namely that 'Justice must not only be done but it must be seen to have been done'. It would enable the Chairman to avert a 'reasonable suspicion' of or 'real likelihood' of bias. It could also be exercised on establishing any other sufficient and sustainable grounds. This power is to be used with great circumspection and sparingly. We do not think it necessary to elaborate on this issue as we have already stated that we are confining our consideration only to the specific question whether High Court at Calcutta was having jurisdiction to entertain the challenge against the order in P.T.No.215/2021.

14. Before delving into the moot question any further we deem it appropriate to refer to the impugned judgment to know in what manner the order of transfer passed in P.T.No.215/2021 was understood by the High Court. In other words, whether the High Court while passing the impugned judgment treated the order impugned before it as an order passed in the O.A.No.1619/2021 pending before the Kolkata Bench of the Tribunal that lies within its territorial jurisdiction by that Bench of the Tribunal or as an order passed at the Principal Bench of the Tribunal lying outside its jurisdiction transferring that very Original Application to another Bench of the Tribunal. A scanning of the impugned order itself would reveal that the High Court perfectly understood and treated the order impugned before it in WPCT No.78/2021, being the order in P.T.No.215/2021, as an order passed by the Principal Bench of the Tribunal at New Delhi, transferring O.A.No.1619/2021. This, in our opinion, is the correct understanding of the said order, as it was passed in P.T.No.215/2021, filed by the Appellant herein who was also a party to O.A.No.1619/2021, calling for an order in exercise of the power under Section 25 of the Act, before the Principal Bench. This aspect is very clear from paragraphs 22, 23, 24, and 25 of the impugned judgement of the High Court. They read thus:

> "22. The questions which acquire relevance to decide the present writ petition are as follows:

> 23. Is the present writ petition maintainable before this court, in view of the impugned order being passed by the Principal Bench situated at New Delhi?
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> 24. Did the Principal Bench act beyond its jurisdiction in passing the impugned order?
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> 25. Was the Principal Bench, CAT justified in law in passing the impugned order on merits?"

15. When once the High Court found the order impugned as one passed by the Principal Bench we have no hesitation to hold that the High Court should have confined its consideration firstly, to decide its own territorial jurisdiction for exercising the power of judicial review over the order dated 22.10.2021 passed by the Principal Bench in P.T.No.215/2021 in the correct perspective, without reference to the bundle of facts constituting the cause of action for filing O.A.No.1619/2021 before the Kolkata Bench of the Tribunal founded on the cause of action referred to in Rule 6(2) of the Procedure Rules that decides the place of filing of an O.A.. To wit, those bundle of facts which would be necessary for the applicant to prove, if traversed, in order to support the right to a judgment from that Bench of the Tribunal. In such circumstances, the question of infringement or otherwise of the right of the respondent herein to litigate before the Kolkata Bench of the Tribunal could not have been gone into, on merits, without deciding the seminal question whether the High Court of Calcutta itself had jurisdiction to undertake judicial review of the order passed by the Chairman in exercise of power under Section 25 at the Principal seat of the Tribunal at New Delhi we do not have any hesitation in holding that the High Court at Calcutta could not have entertained the Writ Petition.

16. As noted earlier the order of transfer of O.A.No.1619/2021 passed in P.T.No.215/2021 was understood and dealt with by the High Court as an order passed by the Principal Bench of the Tribunal. Section 5(7) of the Act makes it clear that the Bench of the Central Administrative Tribunal at New Delhi is known as the Principal Bench. It is in this context and the relevant factors as also the situations likely to cause conflicting decisions by different High Courts referred to hereinbefore in the preceding paragraphs of this judgment that the decision of this Court in L. Chandra Kumar's case assumes relevance. Earlier, we made a brief reference about the law laid down in the said decision. One of the broad issues that was considered by the Constitution Bench was as follows:

> "Whether the power conferred upon Parliament or the State Legislatures, as the case may be, by sub-clause(d) of clause(2) of Article 323 A or sub- clause(d)of clause(3) of Article 323 B of the Constitution, to totally exclude the jurisdiction of 'all courts', except that of the Supreme Court under Article 136, in respect of disputes and complaints referred to in clause(1) of Article 323A or with regard to all or any of the matters specified in clause (2) of Article 323B, runs counter to the power of judicial review conferred on the High Courts under Article 226/227 and on the Supreme Court under Article 32 of the Constitution? During such consideration the constitutional validity of Section 28 of the Act, the "exclusion of jurisdiction" clause

was also considered by this court. It reads thus:-

> S.28. Exclusion of jurisdiction of courts except the Supreme Court under article 136 of the Constitution.- On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any Service or post or service matters concerning members of any Service or persons appointed to any Service or post, [no court except –
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> (a) the Supreme Court; or
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> (b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947) or any other corresponding law for the time being in force, shall have], or be entitled or exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.

In view of the reasoning adopted the constitution Bench held Section 28 of the Act and the "exclusion jurisdiction" clauses in all other legislations enacted under the aegis of Article 323A and 323B, to the extent they exclude the jurisdiction of the High Courts under Articles 226/227 and the Supreme Court under Article 32, of the constitution, was held unconstitutional besides holding clause 2(d) of Article 323A and clause 3(d) of Article 323B, to the same extent, as unconstitutional. Further, it was held thus:-

> "The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other Courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323A and Article 323B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls." (Emphasis supplied).
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> When once a Constitution Bench of this court declared the law that "all decisions of Tribunals created under Article 323A and Article 323B of the Constitution will be subject to the scrutiny before a Division Bench of the High Court within whose jurisdiction the concerned Tribunal falls", it is impermissible to make any further construction on the said issue. The expression "all decisions of these Tribunals" used by the Constitution Bench will cover and take within its sweep orders passed on applications or otherwise in the matter of transfer of Original Applications from one Bench of the Tribunal to another Bench of the Tribunal in exercise of the power under Section 25 of the Act. In other words, any decision of such a Tribunal, including the one passed under Section 25 of the Act could be subjected to scrutiny

> only before a Division Bench of a High Court within whose jurisdiction the Tribunal concerned falls. This unambiguous exposition of law has to be followed scrupulously while deciding the jurisdictional High Court for the purpose of bringing in challenge against an order of transfer of an Original Application from one bench of Tribunal to another bench in the invocation of Section 25 of the Act. The law thus declared by the Constitution Bench cannot be revisited by a Bench of lesser quorum or for that matter by the High Courts by looking into the bundle of facts to ascertain whether they would confer territorial jurisdiction to the High Court within the ambit of Article 226(2) of the Constitution. We are of the considered view that taking another view would undoubtedly result in indefiniteness and multiplicity in the matter of jurisdiction in situations when a decision passed under Section 25 of the Act is to be called in question especially in cases involving multiple parties residing within the jurisdiction of different High Courts albeit aggrieved by one common order passed by the Chairman at the Principal Bench at New Delhi.

17. The undisputed and indisputable position in this case is that the WPCT No.78/2021 was filed to challenge the order dated 22.10.2021 in P.T.No.215/2021 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 O.A.No.1619/2021 to its files. On applying the said factual position to the legal exposition in L. Chandra Kumar's case (supra) it is crystal clear that the Principal Bench of the Central Administrative Tribunal at New Delhi, which passed the order transferring O.A.No.1619/2021 vide order in P.T.No.215/2021 falls within the territorial jurisdiction of High Court of Delhi at New Delhi. 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's case (supra), 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:

> "The present petition has been filed being aggrieved by order dated 30.11.2018 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the 'Tribunal'), by the O.A.No.421/2018 pending before the Ahmedabad Bench has been transferred to the Principal Bench of the Tribunal." In the instant case, the High Court at Calcutta has usurped jurisdiction to entertain the Writ Petition, viz., WPCT No.78/2021, challenging the order passed by the Central Administrative Tribunal, New Delhi, in P.T.No.215/2021, even after taking note of the fact that the Principal Bench of the Tribunal does not lie within its territorial jurisdiction.

18. In the circumstances, based on our conclusion the impugned judgment and final order in WPCT No.78/2021 passed by the High Court at Calcutta is to be held as one passed without jurisdiction and hence, it is ab initio void. Accordingly, it is set aside. The writ petition being WPCT No.78/2021

filed before the High Court at Calcutta is accordingly dismissed, however, with liberty to the petitioner therein/the respondent herein to assail the same before the jurisdictional High Court, if so advised. In that regard, we clarify the position that we have not made any finding or observation regarding the correctness or otherwise of the order dated 22.10.2021 passed by the Principal Bench of the Tribunal (in fact, by the Chairman of the Tribunal) in P.T.No.215/2021. Needless to say that in the event of filing of such a Writ Petition, it shall be considered on its own merits, in accordance with law.

19. The appeal is allowed in the above terms. Pending applications, if any, stand disposed of.

.....,J.

(A.M. KHANWILKAR) .....,J.

(C.T. RAVIKUMAR) NEW DELHI;

January 06, 2022