Supreme Court of India
Dr. Duryodhan Sahu And Ors vs Jitendra Kumar Mishra And Ors on 25 August, 1998
Author: Srinivasan.
Bench: S.C.Agarwal, S. Saghir Ahmad, M Srinivasan.

PETITIONER:
DR. DURYODHAN SAHU AND ORS.

Vs.

RESPONDENT:
JITENDRA KUMAR MISHRA AND ORS.

DATE OF JUDGMENT: 25/08/1998

BENCH:
S.C.AGARWAL, S. SAGHIR AHMAD, M SRINIVASAN.

ACT:

HEADNOTE:

JUDGMENT:

J U D G E M E N T SRINIVASAN. J.

Leave granted.

2.Two questions have arisen for decision (1) whether an Administrative Tribunal constituted under Administrative Tribunals Act, 1985 (hereinafter referred to as the 'Act') can entertain a public interest litigation and (ii) whether on the facts of this case the Tribunal has exceed its jurisdication in passing the impugned order?

3.The facts are as follows:

The petitioner in S.L.P. 10472-10474/95 hereinafter referred to as the petitioner, a qualified surgeon with M.S. Degree in General Surgery and been working in the Department of Gastroenterology of S.C.B. Medical Collage, Cuttack as an Assistant Surgeon from 17.09.1987. Earlier he worked as lecturer in General Surgery from 11.06.84 to 17.09.86. From 17.09.87, he was assisting the professor and Head of the Department of Surgical gastroenterology for about five years during which period he had acquired 'Special training/experience' in the said subject.

4.The Orissa Public Service Commission caused advertisement No. 27 of 1991/92 inviting applications for the post of Junior Teacher (Lecturer) in several disciplines including Surgical Gastroenterology. The last date for receipt of applications was 15.05.92. The minimum educational qualification was prescribed as under

(a) A candidate must have obtained a post Graduate Degree in speciality or any other equivalent degree or qualification prescribed by the I.M.C./Dental Council of India as the case may be for all the above posts.

(b) For the post of surgical gastroenterology, candidates possessing M.S. (general surgical) Degree with 2 years special training in surgical gastroenterology from the institution recognised by the M.C.I. are eligible.

5. Even before the issue of advertisement the Health and Family Welfare Department of the Government of Orissa sought clarification regarding qualification for appointment to the post of lecturer in the Department of Gastroenterology vide letter no. 43633/Hd 26.12.90. The Medical Council of India (for short M.C.I.) in Letter No. MCI-12(1)/91-Med/21954 dated 27.12.91 replied that the matter was considered by the council at its meeting and it was decided as under "The Postgraduate Committee agreed for the appointment of teachers as Lecturers in the department of Gastroenterology possessing M.S. (General Surgery) with 2 years special training in Surgical Gastroenterology which should be in a recognized institution as prescribed by the MCI in recommendations on Teachers' eligibility qualifications for other similar departments. This arrangement is agreeable for five years till sufficient people are available with the postgraduate qualification in Surgical Gastroenterology."

It was only on that basis the minimum of two years special training in a recognized institution was prescribed as part of the minimum qualification for the post of Lecturer in the case of candidates possessing M.S. (General Surgery) degree.

6. The institution in which the petitioner was working, namely S.C.B. Medical College is also one of the institutions recognized by the M.C.I In response to the aforesaid advertisement, the petitioner applied for the post of Junior Teacher (Lecturer) in the discipline of Surgical Gastroenterology. Six other persons had also applied for the same post. The case of the petitioner and that of Dr. P.K. Dehata were referred to the Director of Medical Education & Training by the Public Service Commission for his opinion on their eligibility for selection. The Director expressed his opinion in his letter no. 1387 MET. dated 20.7.92 that the petitioner was qualified to be considered as per MCI ruler along with other eligible candidates. The petitioner and Dr. M.K. Mohapatra were called for the viva voce test. The name of Dr. Mohapatra was recommended to Government along with the advice that the Commission had maintained a reserve list of suitable candidates for a period of one year from the date of recommendation. Dr. Mohapatra was appointed as Junior Teacher.

7.The Government found that the department of Surgical Gastroenterology was under staffed as it had only one Professor and one Lecturer and it was not in accordance with MCI pattern. Hence the Government created one more post of Lecturer on 25.08.93. On the same day, the Government

requested the Public Service Commission to recommend the name of a suitable candidate from the reserve list. On 30.08.93, the Commission recommended the name of the pititioner for appointment.

8.At that stage one candi charan Routray in his capacity as General Secretary, Cuttack Surakhya Committee filed O.A. 1439/93 before the Principal Bench of the Central Administrative Tribunal at Bhubaneswar. Another application O.A. 1630/93 was filed by the Cuttack surakhya Committee through Jitendra Kumar Mishra before the same Bench. A third application was filed before the Cuttack Bench in O.A. No. 1614 (c)/94 by one Nibas Chandra Mishra. The prayers in all the three applications are identical. They are for (i) quashing the order of the Government dated 25.08.93 creating one more post of Junior Teacher, (ii) debarring the petitioner from being appointed as Junior Teacher and (iii) preventing the Government from appointing any candidate as Lecturer without requisite qualification and training in the super speciality. The averment in all the three applications were almost identical. The substance of the allegations was that the petitioner did not possess the qualifications prescribed for the post of Lecturer and the Government in order to accommodate him created another post which was not advertised. It was alleged that the petitioner had exerted influence over the concerned authorities and managed to secure the appointment. According to the applicants the appointment was not only malafide and illegal but it was also against public interest.

9.The applications were opposed by the Government and the petitioner on merits as well as on grounds of maintainability. The Tribunal held that the applications were maintainable at the instance of the applicants. As regards the qualification of the petitioner the Tribunal observed as follow:-

The most important question to be decided is whether Dr. Sahoo possesses the requisite qualification and eligibility for the post of Lecturer in Surgical Gastroenterology. A perusal of the clarificatory letter issued by the IMC to the Secretary, Health & F.W. Deptt. (Annexure-I) would indicate that the prescribed qualification is Master's degree in Surgical Gastroenterology. On account of non-availability of candidates possessing that qualification, a temporary relaxation was allowed for a short period of 5 years till doctors with M.S. in Surgical Gastroenterology. On account of non-availability of candidates possessing that qualification, a temporary relaxation was allowed for a short period of 5 years till doctors with M.S. in Surgical Gastroenterology are available. In Lieu of M.S. in Gastroenterology, M.S. in general Surgery with two years special training in the discipline, was allowed. For interpreting the expression "special training in a recognized institution as prescribed by IMC", we would have very much valued the views of IMC itself. But the views of the IMC who are also parties to the litigation, unfortunately are not available as no counter or submission has been filed on their behalf. But it stands to common sense that special training in a super speciality which is to be substituted for a Master's degree in that discipline should be in an apex-medical institution like the AIIMS, specially notified by the IMC for the purpose. There is no indication to show that SCB medical college has been recognized as an institution for imparting special training in Surgical Gastroenterology. The Government counter also does not says so. On the other hand, certain averments in the government counter that the said department in SCB Medical College is under-staffed and that it was manned only by a Professor till Dr. Mohapatra joined as

Lecturer, points to the conclusion that it was not equipped with adequate facilities for imparting special training. No doubt Dr. Sahoo has acquired sufficient practical experience by assisting the Head of Deptt. for a long period of six years and the list of publications he has to his credit, as given in his counter, would support such a view. But it cannot be said that he has acquired the special training indicated by the IMC in their letter since the SCB Medical College has not been notified by the IMC as a recognized institution for imparting such training in that super speciality.

10.On the above reasoning the Tribunal granted the second prayer of the applicants and restrained the appointment of the petitioner as lecturer. The Tribunal refused to quash the Government order creating the post and rejected the first prayer. The Tribunal directed the Health and Family Welfare Department to take appropriate steps for filling up the post after complying with the relevant statutory provisions and issuing a fresh advertisement through the Public Service Commission. The petitioner has challenged the said order in S.L.P. Nos. 10472-10474/95. The The State Government has filed S.L.P. Nos. 18714-18716/95 against the same order. It is in such circumstance the two questions set out in thee beginning arise for consideration.

11.These S.L.P. came up for hearing on 15.02.95 before a Bench of two Judges. The Bench passed the following order:-

"Whether a public interest litigation can be entertained by the Administrative Tribunal under Section 19 of the Administrative Tribunals Act, 1985 is thee question raised by the appellantt-State of Orissa & Ors? Section 19, inter alia, provides that a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for redressal of his grievance. Prima facie, it appears that a public interest litigant is not a person aggrieved in that sense. The State-appellant relies on certain observations made by K. Ramaswamy, J. in R.K. Jain Vs. Union of India - (1993) 4 SCC 119 which are to the following effect:

"Shri Harish Chander, admittedly was the Senior Vice-President at the relevant time. The contention of Shri Thakur of the need to evaluate the comparative merits of Mr. Harish Chander and Mr. Kalyasundaram a seniormost member for appointment as President would not be goes into in a public interest litigation. Only in a proceedings initiated by an aggrieved person it may be open to be considered. This writ petition is also not a writ of quo warranto. In service jurisprudence it is settled law that it is for the aggrieved person i.e. non-appointee to assail the legality of the offending action. Third party has no locuc standi to canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the petitioner, a public-spirited person."

These observations were not specifically concurred to by the other two Members of the Bench (one of us being one such member). The Administrative Service Tribunals have been recognised by this Court to be substitutes of the High Court and other Courts having had jurisdiction in the matter. The High Court under Article 226 of the Constitution has power to issue a writ of quo warranto and that can undeniably be sought by any person; not necessarily a person aggrieved. Would it be otherwise and locus standi being determined purely on the axis of Section 19, the purpose of creating the Service Tribunal would seemingly be frustrated. It may therefore crop up that the above observations of K. Ramaswamy, J may attract an exception. In any case, the matter is important in

order to define jurisdiction of the tribunal and therefore in the fitness of things, should be placed before a three Member Bench. We therefore direct these special leave petitions to be heard by a three-Member Bench."

12. We have heard counsel on both sides at length. Several rulings have been relied on by them though in none of them, the questing arose directly for consideration. The question as to maintainability of a public interest litigation before the Tribunal depends for its answer on the provisions of the Act. The Tribunal having been created by the Act, the scope and extent of its jurisdiction have to be determined by interpreting the provisions thereof. In S.P. Sampath Kumar versus State of A.P. (1987) 1 S.C.C. 124 it was held that the Tribunal constituted under the Act were effective substitutes to the High Courts in the scheme of aministration of justice and they were entitle to exercise powers thereof. It was observed that they were real substitutes not only in form and dejure but in content and de facto. On that premise the Court held that the power of judicial review exercised by High Courts in service matters under Articles 226 and 227 was completely excluded. It may be noticed that the order of reference dated 15.2.96 extracted in the earlier paragraph makes a specific mention of this aspect of the matter. If that view had continued to prevail, the approach to the question might have been different.

13.But the law has now been declared differently in chandra kumar versus Union of India (1997) 3 S.C.C. 261 that the Tribunals have to perform only, a 'supplemental as opposed to a substitutional - role' in discharging the powers conferred by Articles 226/227 are not taken away by the Act. it is only against such a backdrop the jurisdiction of the Tribunal under the Act to entertain a public interest litigation has to be decided. No doubt, it is contended by learned counsel for the appellants that even from the inception of the Act public interest litigations could be entertained only by the high Courts in exercise of their extraordinary jurisdiction and plenary powers and as such powers were not available to the Tribunals, the latter could never have entertained such litigations. It is not necessary for us to consider that contention. As the status of the Tribunals has now been settled in Chandra Kumar (supra), we will discuss the question in the light of the said pronouncement.

14.Section 14 of the Act provides that the central Administrative Tribunal shall exercise all the jurisdiction, powers and authority exercisable by all courts except the Supreme Court immediately before the appointed day in relation to matters set out in the section. Similarly, section 15 provides for the jurisdiction, powers and authority of the State Administrative Tribunals in relation to matters set out therein. Sections 19 to 27 of the Act deal with the procedure. Section 19 strikes the key-note. Sub-sections (1) and (4) of section 19 are in the following terms:

S.19 (1) Subject to other provisions of this Act, a person aggrieved by any order pertaining to any matter within the jurisdiction of a Tribunal may make an application to the Tribunal for the redressal of his grievance.

(a) by the Government or a local or other authority within the territory of India or under the control of the Govt. of India or by any corporation (or society) owned or controlled by the Government; of

(b) by an officer, committee or other body or agency of the Government or a local or other authority or corporation (or society) referred to in clause (a) ********** ********** S.19 (4) Where an application has been admitted by a Tribunal under sup-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.

15. Section 20 provides that the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant rules. Section 21 provides for a period of limitation for approaching the Tribunal. A perusal of the above provisions shows that the Tribunal can be approached only by 'persons aggrieved' by an order as defined. The crucial expression ' persons aggrieved' has to be construed in the context of the Act and the facts of the case.

16.In Thammanna versus K. Veera Reddy and other (1980) 4 S.C.C. 62 it was held that although the meaning of the expression 'person aggrieved' may vary according to the context of the statute and the facts of the case, nevertheless normally, a person aggrieved must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something or wrongfully refused him something or wrongfully affected his title to something.

17.In Jasbhai Motibhai Desai Versus Roshan Kumar Haji Bashir Ahmed and others (1976) 1.S.C.C. 671 the Court held that the expression 'aggrieved person' donotes an elastic, and to an extent, an elusive concept. The Court observed: "...It cannot be confined within the bounds of a rigid, exact, and comprehensive definition. At best, its features can be described in a broad tentative manner. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statue of which contravention is alleged, the specific circumstances of the case, the nature and extent of the petitioner's interest, and the nature and extent of the prejudice or injury suffered by him'.

18.The constitution of Administrative Tribunal was necessitated because of large pendency of cases relating to service matters in various courts in the country. It was expected that the setting up of Administrative Tribunals to deal exclusively in service matters would go a long way in not only reducing the burden of the Courts but also provide to the persons covered by the Tribunals speedy relief in respect of their grievances. The basic idea as evident from the various provisions of the Act is that the Tribunal should quickly redress the grievances in relation to service matters. The definition of 'service matters' found in Section 3 (q) shows that in relation to a person the expression means all service matters relating to the conditions of his service. The significance of the word 'his' cannot be ignored. Section 3 (b) defines the word 'application' as an application made under Section 19. The latter Section refers to 'person aggrieved'. In order to bring a matter before the Tribunal, an application has to be made and the same can be made only by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. We have already seen that the work 'order' has been defined in the explanation to sub-s. (1) of Section 19 so that all matters referred to in Section 3 (q) as service matters could be brought before the Tribunal. It in that context, Sections 14 and 15 are read, there is no doubt that a total stranger to the concerned service cannot make an

application before the Tribunal. If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal the very object of speedy disposal of service matters would get defeated.

19.Our attention has been drawn to a judgement of the Orissa Administrative Tribunal in Smt. Amitarani Khuntia Versus State of Orissa 1996. (1) OLR (CSR)-2. The Tribunal after considering the provisions of the Act held that a private citizen or a stranger having no existing right to any post and not intrinsically concerned with any service matter is not entitled to approach the Tribunal. The following passage in the judgement is relevant: "....A reading of the aforesaid provisions would mean that an application for redressal of grievances could be filed only by a 'person aggrieved' within the meaning of the Act.

Tribunals are constituted under Article 323 A of the Constitution of India. The above Article empowers the Parliament to enact law providing for adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or any local or other authority within the territory of India or under the control of the Government and such law shall specify the jurisdiction, powers and authority which may be exercised by each of the said Tribunals. Thus, it follows that Administrative Tribunals are constituted for adjudication or trial of the disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts. Its jurisdiction and powers have been well-defined in the Act. It does not enjoy any plenary power." We agree with the above reasoning.

20.Learned counsel for the respondents relied upon the decision of this Court in S.P. Gupta and others etc. versus Union of India & Ors. etc. 1982 (2) S.C>R. 365 and read out several passages from the judgement dealing with the question of 'standing'. In that case the Court was not concerned with a Tribunal constituted under a Statute. It was discussing the question of 'standing' in a proceeding before the High Court or this Court. That ruling cannot help the respondents in the present case. Our attention is also drawn to a judgement in University of Mysore and another versus C.D. Govinda Rao and another 1964 (4) S.C.R. 575 wherein the scope of a writ of quo warranto has been discussed. That decision will not apply in the present case as there was no application for issue of a writ of quo warranto before the Tribunal. Learned counsel for the respondents submits that the proceedings before the Tribunal is in the nature of quo warranto and it could be filed by any member of the public as he is an aggrieved person in the sense public interest is affected. We have already pointed out that the applications in the present case have been filed before the appointment of the petitioner as a Lecturer and the relevant prayers are to quash the creation of the post itself and preventing authorities from appointing the petitioner as lecturer. Hence, the applications filed by the respondents cannot be considered to be quo warranto.

21.In the result, we answer the first question in the negative and hold that the Administrative Tribunal constituted under the Act cannot entertain a public interest litigation at the instance of a total stranger.

22.Turning to the second question, even the facts set out by us earlier would show that the petitioner satisfied the requisite qualifications prescribed for the post of lecturer. The only contention urged is that the petitioner did not have two years special training in Surgical Gastroenterology from an institution recognised by MCI for giving special training. There is no merit in the contention. The list of recognised Medical Colleges in India published by the MCI contains the name of S.C.R. Medical College, Cuttack in Sl. No. 80. Thus the said college is a recognised institution. The interpretation that the institution should be recognised for giving special training is erroneous. There is no such requirement in the rule.

23.Even the Tribunal has found that the petitioner had acquired sufficient practical experience by assisting the Head of the Department of Surgical Gastroenterology in the said college for a long perliod of six years and had several publications to his credit. The Tribunal overlooked that the said experience acquired by the petitioner was recognised to be sufficient to satisfy the requisite qualification of two years special training by the Director of Medical Education and Training when a reference was made to him by the Orissa Public Service Commission. It was only after getting the matter clarified, the Service Commission called the petitioner for viva voce. Once the concerned authorities are satisfied with the eligibility qualifications of the person concerned it is not for the Court or the Tribunal to embark upon an investigation of its own to ascertain the qualifications of the said person.

24.In State of Bihar versus Ramesh Chandra and another (1997) 4 S.C.C., 43 a Division Bench to which one of us (S.C. Agarwal, J.) was party had occasion to consider a similar regulation prescribing qualifications for appointment of Professor/Associate Professor. The rule used the expression 'two years special training'. The High Court held that the appointee did not have the requisite special training and failed to establish that he possessed the same qualification. This Court reversed that conclusion and pointed out that the said person had received more than two years training in thee concerned speciality after obtaining the degree of M.S. It was held that the training received as resident surgical officer by the concerned person between 1976 and 1980 could be regarded as special training though the concerned Unit was not an independent unit but it was having all the requisite facilities. This Court also referred to the Certificate issued by the Head of the Unit and other materials on record and held that the condition of special training for two years was fulfilled.

25.In the present case we have already referred to the opinion of the Director of Medical Education in the matter of qualifications of the petitioner. There was no justification for the Tribunal to ignore the same. Hence the Tribunal exceeded its jurisdiction by considering a technical question after brushing aside the opinion of the experts and the concerned authorities. There is no material whatever to accept the contention of the respondents that the petitioner wielded influence over the concerned authorities or that the action of the authorities was vitiated by mala fides.

26.In the view we have expressed above, it is unnecessary for us to consider the contention of the appellants that the applications before the Tribunal were not bona fide and the applicants therein had ulterior motives in filing the same.

27.In the result, the appeals are allowed. The judgement and order of the Orissa Administrative Tribunal, Bhubneshwar in O.A. nos. 1439 and 1630 of 1992 and 1614 of 1994 is set aside. There will however be no order as to costs.