

REPORTABLE**THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1392 OF 2019
(@ SLP(C) NO. 27490 OF 2018)**

All India Institute of Medical Sciences ...Appellant

Versus

Sanjiv Chaturvedi & Ors. ...Respondents

J U D G M E N T**Indira Banerjee, J.**

Leave granted.

2. This appeal is against the final judgment and order dated 21.08.2018 passed by a Division Bench of the High Court of Uttarakhand at Nainital allowing the writ petition being WPSB No.359 of 2018 filed by the respondent no.1 and quashing the order dated 18.09.2017 passed by the Chairman of the Central Administrative Tribunal (hereinafter referred to as "CAT") at the Principal Bench at Delhi, *inter alia*, staying proceedings in OA 331/00790/ 2017 filed by the respondent no.1 and pending before a Division Bench of CAT at Nainital.

3. The respondent no.1, an Indian Forest service officer of the Uttarakhand cadre of 2002 Batch was posted as Deputy

Secretary at the All India Institute of Medical Sciences, New Delhi from 29.6.2012 till 28.6.2016.

4. The said post of Deputy Secretary was created with the approval of the Department of Expenditure, *inter alia*, to coordinate and manage infrastructure projects and ensure their timely completion, to exercise management and control of the Institute and to coordinate with Multi Disciplinary Experts.

5. At its 195th meeting held on 20.7.2010, the Standing Finance Committee of the Institute decided against the creation of a new post of Central Vigilance Officer and resolved that the work of Central Vigilance Officer should also be assigned to the officer, joining the newly created post of Deputy Secretary of AIIMS. The Governing Body and Institute body of AIIMS headed by the Union Health Minister ratified the decision of the Standing Finance Committee.

6. An order dated 23.6.2011 was issued by the Ministry of Health and Family Welfare enumerating the duties pertaining to the said post of Deputy Secretary of AIIMS.

7. As stated above, respondent no.1 was appointed Deputy Secretary of AIIMS on 29.6.2012. As per the work allocation order the respondent no.1 was also made Central Vigilance Officer of the AIIMS.

8. It is the case of the respondent no.1 that the work of the General Section was withdrawn from the respondent no.1 in November 2012, the work of Central Vigilance Officer was withdrawn from him in August 2014, the work of dealing with grievances was withdrawn from him some time in 2015 and in December 2015 the work of the Estate Section was withdrawn from him. Ultimately the respondent no.1 was left practically without any work, apart from signing pension papers and booking guest houses.

9. According to the respondent no.1, there was delay in completion of infrastructure projects, which along with the way in which the respondent no.1 had been denuded of duties by successive office orders, attracted severe criticism in a report of the Parliamentary Committee.

10. According to the respondent no.1, at the time when he was assigned the work of Central Vigilance Officer, the then Health Secretary had commented on his "exemplary performance" and "absolute integrity". Moreover, the respondent no.1 was, in his Annual Performance Appraisal Reports for the years 2012-13 and 2013-14 graded as 'outstanding', with the following remarks by the then Union Health Minister "*Shri Sanjiv Chaturvedi, Deputy Secretary and CVO, AIIMS, New Delhi, is a man of integrity, sincerity, who is keen on performing his assigned role to the best of his ability*

and knowledge without fear or favour'.

11. The respondent no.1 had been awarded the Ramon Magsaysay Award for the year 2015 in recognition of his exemplary integrity, courage and tenacity, *inter alia*, in uncompromisingly exposing and painstakingly investigating corruption in public office. Records reveal that the respondent no.1 had donated the award money of Rs.14,23,000/- to the Prime Minister's Relief Fund after the All India Institute of Medical Sciences refused to accept his donation of the award money to the All India Institute of Medical Sciences for free treatment of under privileged patients.

12. According to the respondent no.1, no complaint of any kind was received against him from any employee during his two year tenure as Central Vigilance Officer of the Institute. However, the very same persons, who had earlier showered praises on the respondent no.1 turned against him for extraneous reasons, particularly his role in exposing corruption.

13. Being aggrieved, the respondent no.1 filed an application being O.A. No.1887 of 2015 before the Principal Bench of the CAT at Delhi, *inter alia*, for directions on the concerned authorities to allocate the work of Deputy Secretary to the respondent no.1. The said application has been dismissed by a judgment and order dated 17.5.2016.

14. The respondent no.1 has alleged that the duties of Central Vigilance Officer were withdrawn from him as he had unearthed irregularities and corruption in infrastructure projects. The nature or reasons for the disputes between the respondent no.1 and the appellant are not relevant to the issues involved in this appeal.

15. A memorandum dated 7.1.2016 was served on the respondent no.1, informing him that the Director of the All India Institute of Medical Sciences had placed on record his displeasure with insubordination, indiscipline and lack of work ethics of the respondent no.1 during the Winter Session of Parliament in the year 2015, and directed that a copy of the said memorandum be kept in the personal file of the respondent no.1. A representation made by the respondent no.1 against the aforesaid memorandum was rejected by the Competent Authority.

16. Being aggrieved, the respondent no.1 filed OA No.1342 of 2016 before the Principal Bench of the CAT at New Delhi challenging the said Memorandum dated 7.1.2016 and praying for orders, restraining the Director of the All India Institute of Medical Sciences from writing the Annual Performance Appraisal Report of the respondent no.1. The said application is pending. On the application being filed, the learned Tribunal

directed issuance of notices, but declined the prayer of the respondent no.1 for interim relief.

17. On 28.6.2016, the four year deputation of the respondent no.1 as Deputy Secretary at AIIMS came to an end, and he joined his new post at Uttarakhand in August, 2016, after availing leave of two months.

18. By an order dated 11.1.2017 AIIMS communicated an adverse Annual Confidential Report for the year 2015 -2016 to the respondent no.1 wherein he had uniformly been given 'Zero' grading in all attributes. On 23.1.2017, the respondent no.1 filed an appeal against the order dated 11.1.2017 before the Competent Authority. The appeal was rejected by an order dated 15/20.4.2017.

19. On 19.6.2017, the respondent no.1 filed a writ petition being WPSB No.225 of 2017 before the Uttarakhand High Court challenging the orders dated 11.1.2017 and 15/20.4.2017. The respondent no.1 also filed an application being PT No.286/2017 in OA No. 1342/2016 before the Principal Bench of the CAT at Delhi for transfer of OA No. 1342/2016 from the Principal Bench of the CAT at Delhi to its Bench at Nainital. The appellant has filed a counter affidavit to the said application.

20. By an order dated 19.6.2017 in the writ petition being WPSB No.225 of 2017, the Division Bench of Uttarakhand High Court relegated the respondent no.1 to approach the Tribunal

under the Administrative Tribunals Act, 1985 (for short 'the Act') and to seek all reliefs available to him. The respondent no.1 was given the liberty to approach the High Court in the event any relief prayed for by the respondent was rejected by the Tribunal.

21. Thereafter, the respondent no.1 instituted an application being OA No.331/00790/2017 before the Nainital Bench of the CAT challenging the Annual Performance Appraisal Report (APAR) of the year 2015-16 whereupon an interim order was passed in favour of the respondent no.1 on 18.9.2017, by a Division Bench of the Tribunal, the operative part whereof is set out hereinbelow:-

“Matter be posted for further hearing on interim relief on 03.10.2017. Respondents shall file their reply before the said date. In the meantime, in the interest of justice, it is directed that if any matter related to the career progression of the applicant comes up for consideration before the terms of the impugned orders shall not be taken into account while assessing and the applicant's suitability or fitness and he shall be considered on the basis of the rest of his ACRs/APARs.

22. The Union of India filed an application before the Chairman of the Tribunal being PT 316 /2017 seeking transfer of OA No. 331/00790/2017 to the Principal Bench at Delhi. By an *ex parte* order dated 18.9.2017 passed in the said transfer application, the Chairman of the CAT, sitting singly, stayed proceedings in OA No.331/00790/2017 pending before a two

member Bench at Nainital for a period of six weeks, and directed that notice be issued to the respondent no.1.

23. Challenging the aforesaid order on the ground that the Chairman of CAT, sitting singly, could not have stayed proceedings pending before a Division Bench, the respondent no.1 filed a writ petition being W.P.(SB) No. 259/2018 in the High Court of Uttarakhand at Nainital.

24. By the impugned order dated 21.8.2018, which is under appeal, the High Court allowed the writ petition and set aside the impugned order dated 18.9.2017 of the Chairman, observing that the Chairman of the Tribunal, while sitting singly, could not stay the proceedings pending before the Division Bench. The High Court imposed costs of Rs.25,000/- on the appellant.

25. Learned counsel appearing on behalf of the appellant submitted that the impugned order was passed without giving the appellant an opportunity of hearing. No Vakalatnama was executed by the appellant authorizing the learned Additional Solicitor General of India Shri Rakesh Thapliyal to appear before the High Court on behalf of AIIMS.

26. Learned Counsel for the appellant next submitted that the High Court had erred in holding that the Chairman of CAT, sitting singly, could not stay proceeding before the Division Bench. He argued that a conjoint reading of the preamble of

the Act with Section 5(2), 5(6), the proviso to Section 24 and Section 25 of the said Act, shows that the Chairman sitting singly can stay proceedings before any other Bench. Such power has been conferred upon the Chairman under Section 5(6) read with Section 25 of the Act.

27. Learned counsel submitted that it was necessary for the Chairman to pass an order of stay of proceedings in O.A. No.331/790/2017 pending before the Bench at Nainital to avoid multiplicity of proceedings and for judicial uniformity, more so, since the *lis* in OA No.1342 of 2016 before the Principal Bench and in O.A. No. 331/790/2017 at the Bench at Nainital were similar. The subject matter of both the applications related to the APAR of the year 2015-2016.

28. In support of his submission, that the Chairman of the CAT, considering an application for transfer under Section 25 of the Act, had the power to stay the proceedings before the Nainital Bench, of which transfer had been sought, counsel cited ***Dr. Mahabal Ram vs. Indian Council of Agricultural Research and others¹*** and ***L. Chandra Kumar vs. Union of India & Ors.²***.

29. Counsel appearing on behalf of the respondent no.1 refuted the submission that the appellant had not been heard by the High Court, arguing that the appellant had duly been

1 (1994) 2 SCC 401

2 (1997) 3 SCC 261

represented by Shri Rakesh Thapliyal, Additional Solicitor General of India. He submitted that, as per the rules of the High Court an advance copy of the writ petition had also been served on the Additional Solicitor General Shri Rakesh Thapliyal. The Additional Solicitor General and senior government counsel had been representing both Union of India and AIIMS in the High Court as well as in Nainital Bench of CAT where the Union of India and AIIMS had jointly filed reply through counsel for Union of India.

30. Counsel appearing for the Respondent no.1 emphatically argued that the Chairman of CAT sitting singly had no power under the Act to stay the proceedings in a part-heard matter before a Division Bench of the same Tribunal. It was trite that a body created by statute could only have those powers provided by statute and nothing more.

31. Counsel for the respondent no.1 further argued that the appellant had filed O.A No.331/790 of 2017 pursuant to the order of the Division Bench of the High Court, in the writ petition filed by the respondent no.1, being WPSB No.225 of 2017. The order of the Chairman was, thus, in violation of the order of the Division Bench of the High Court.

32. Counsel appearing for the respondent no.1 also submitted that under Section 24 of the Act, the maximum duration of an *ex-parte* interim order could be two weeks and that too subject

to certain conditions, including service of advance copy, which had not been done in this case. Moreover, there had to be a prima facie finding that the appellant would suffer irreparable loss, which could not be monetarily compensated, if no interim order were passed. In this case, the Chairman passed a non-speaking interim order for six weeks. The order does not disclose any urgency or irreparable loss which could not be monetarily compensated.

33. Counsel for the respondent no.1 also submitted that the cause of action in OA No. 331/790/2017 was distinct from cause of action in OA No. 1342/2016. The communication of adverse APAR for the year 2015-16 gave rise to a fresh cause of action. Unless challenged, the APAR would have led to adverse consequences for the respondent no.1, such as, denial of promotion.

34. Counsel for the respondent no.1 submitted that OA No. 1342/2016 and OA No. 331/790/2017 arose as a result of two completely different orders and, in any case, the issue of whether there was similarity of cause of action in the two proceedings had been dealt with by the Nainital Bench. The finding of the Nainital Bench had never been challenged by the appellant and had attained finality.

35. Relying on the judgment of this Court in ***Ramrameshwari***

Devi and Ors. v. Nirmala Devi & Ors.³, Counsel for the respondent no.1 submitted that the High Court had rightly imposed a fine on the appellant, as the appellant had obtained an *ex parte* order by misrepresentation.

36. Counsel for the respondent no.1 finally submitted that this appeal might be dismissed, as it is purely based on perjury and concealment of facts, citing ***Kishorbhai Gandubhai Pethani v. State of Gujarat & Anr.***⁴, ***Kishore Samrite V. State of Uttar Pradesh & Ors.***⁵ and ***Prestige Lights Ltd. v. State Bank of India***⁶.

37. It is not in dispute that the impugned order, under challenge in this Court, records the appearance of Shri Rakesh Thapliyal, Additional Solicitor General on behalf of AIIMS as well. Any objection with regard to erroneous recording of appearances, or the authority of the learned Additional Solicitor General of India to represent the AIIMS ought to have been urged before the High Court by making an appropriate application. The objection to the appearances of the Additional Solicitor General, representing the Central government in the same proceedings, is prima facie preposterous, considering that the AIIMS is under full control of the Central Government. It is, however, not for this Court to examine whether the

3 (2011) 8 SCC 249

4 (2014) 13 SCC 539

5 (2013) 2 SCC 398

6 (2007) 8 SCC 449

learned Additional Solicitor General of India had been authorized to appear before the High Court on behalf of AIIMS or not.

38. The judgments of this Court in ***Munna Lal Karosia vs. State of Madhya Pradesh and Others***⁷ and ***Association of Synthetic Fibre Industries vs. Apollo Tyres Limited and Others***⁸, cited by the appellant to argue that a final order ought not be passed by the High Court against any person without giving that person an opportunity of hearing, have no application in the facts and circumstances of this case, since the appellant had apparently been represented by the Additional Solicitor General. The judgments were rendered in the particular facts and circumstances of those cases.

39. In ***Munna Lal Karosia*** (supra), the High Court had held Munna Lal Karosia to be guilty of contempt without hearing him. It was in the aforesaid context that this Court deprecated the passing of stigmatic orders against a person without giving that person an opportunity of hearing. An order of contempt may be stigmatic. The order under appeal is not so. Imposition of costs does render an order stigmatic, as sought to be argued on behalf of the appellant.

40. The main question before this Court is, whether the Chairman of the Tribunal, sitting singly and exercising his power

7 (2012) 12 SCC 255

8 (2010) 13 SCC 735

under Section 25 of the Act, to transfer proceedings from one Bench to another, could have stayed proceedings before a two member Bench and rendered interim orders passed by that Bench inoperative. The answer to the aforesaid question has to be in the negative for the reasons discussed hereinafter.

41. The Act has been enacted in pursuance of Article 323 A, inserted into the Constitution of India by the Constitution (42nd Amendment) Act, 1976, which enables Parliament to enact law to provide for adjudication and/or trial by Administrative Tribunals of disputes in respect of recruitment and conditions of service of persons in public services and posts *inter alia* in connection with the Union of India and authorities under its control.

42. As observed by the Supreme Court in ***Vatticherukuru Village Panchayat v. Nori Venkatarama Deekshithulu and Ors.***⁹, the Parliament has enacted Article 323A for the reason that the Civil Courts, gripped with rules of pleading and strict rules of evidence and tardy trial, four-tier appeals, endless revisions and reviews under the Civil Procedure Code, are not suited to the need for expeditious dispensation of litigation relating to services.

43. CAT has been established under Section 4 of the Act and exercises jurisdiction, powers and authority as stipulated in

Section 14 of the Act.

44. Under Section 14(1) read with 14(3) of the Act, CAT exercises all the jurisdiction authority and powers, exercised by all Courts except the Supreme Court before the establishment of a Tribunal under the Act.

45. Even though the Evidence Act and Civil Procedure Code may not apply to Tribunals constituted in pursuance of Article 323 A of the Constitution, such Tribunals, like ordinary law courts are bound by rules of evidence and procedure as laid down under the law under which the Tribunal is constituted and/or the rules and regulations framed thereunder and are required to determine the *lis* brought before them strictly in accordance with the law.

46. The preamble to the Act states the object of the Act, which is to provide for adjudication or trial by Administrative Tribunals, of disputes and complaints in respect of 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 of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government, in pursuance of Article 323A of the Constitution of India and for the matters connected therewith or incidental thereto.

47. The reference by Counsel for the appellant to the Preamble of the Act is of no relevance. The respondent no.1 approached the Tribunal for redressal of his grievances. His case was heard by a Division Bench and a reasoned interim order passed on 18.9.2017. The preamble, which states the aims and objects of the Act is of no assistance to the appellant, as it does not lend support to appellant's contention that the Chairman of the Tribunal sitting singly could have stayed further proceedings before a Division Bench. The reliance placed by Counsel on the Preamble is misconceived.

48. Sections 5, 24 and 25 of the Act provide as follows:-

5. Composition of Tribunals and Benches thereof.—

(1) Each Tribunal shall consist of a Chairman and such number of Judicial and Administrative Members as the appropriate Government may deem fit and, subject to the other provisions of this Act, the jurisdiction, powers and authority of the Tribunal may be exercised by Benches thereof.

(2) Subject to the other provisions of this Act, a Bench shall consist of one Judicial Member and one Administrative Member.

(3) Omitted

(4) Notwithstanding anything contained in sub-section (1), the Chairman—

(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;

(b) may transfer a Member from one Bench to another Bench;

(c) may authorise the Judicial Member or the Administrative Member appointed to one Bench to discharge also the functions of the Judicial Member or the

Administrative Member, as the case may be, of another Bench; and

(d) may, for the purpose of securing that any case or cases which, having regard to the nature of the questions involved, requires or require, in his opinion or under the rules made by the Central Government in this behalf, to be decided by a Bench composed of more than two Members issue such general or special orders, as he may deem fit:

Provided that every Bench constituted in pursuance of this clause shall include at least one Judicial Member and one Administrative Member.

(6) Notwithstanding anything contained in the foregoing provisions of this section, it shall be competent for the Chairman or any other Member authorised by the Chairman in this behalf to function as a Bench consisting of a single Member and exercise the jurisdiction, powers and authority of the Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the Chairman may by general or special order specify:

Provided that if at any stage of the hearing of any such case or matter it appears to the Chairman or such Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairman or, as the case may be, referred to him for transfer to, such Bench as the Chairman may deem fit.

(7) Subject to the other provisions of this Act, the Benches of the Central Administrative Tribunal shall ordinarily sit at New Delhi (which shall be known as the principal Bench), Allahabad, Calcutta, Madras, New Bombay and at such other places as the Central Government may, by notification, specify.

(8) Subject to the other provisions of this Act, the places at which the principal Bench and other Benches of a State Administrative Tribunal shall ordinarily sit shall be such as the State Government may, by notification, specify.

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24. Conditions as to making of interim orders. - Notwithstanding anything contained in any other provisions of this Act or in any other law for the time being in force, no interim order (whether by way of injunction or stay or in any other manner) shall be made on, or in any proceedings relating to, an application unless -

(a) copies of such application and of all documents in support of the plea for such interim order are furnished to the party against whom such application is made or proposed to be made; and

(b) opportunity is given to such party to be heard in the matter:

Provided that a Tribunal may dispense with the requirements of clauses (a) and (b) and make an interim order as an exceptional measure if it is satisfied, for reasons to be recorded in writing, that it is necessary so to do for preventing any loss being caused to the applicant which cannot be adequately compensated in money but any such interim order shall, if it is not sooner vacated, cease to have effect on the expiry of a period of fourteen days from the date on which it is made unless the said requirements have been complied with before the expiry of that period and the Tribunal has continued the operation of the interim order.

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.

49. Section 5 provides that a Tribunal is to consist of a Chairman and such number of judicial and administrative members as the appropriate Government may deem fit and, subject to the other provisions of the Act, the jurisdiction, powers and authority of the Tribunal may be exercised by the Benches thereof. Sub-section 2 provides that a Bench is to consist of one Judicial Member and one Administrative Member. This, however, is subject to the other provisions of the said Act.

50. The Chairman of the Tribunal is an entity distinct from the Tribunal and exercises administrative powers and such other

powers as are expressly conferred on him under the Act. Section 5(4)(a) of the Act empowers the Chairman to discharge in addition to the functions of the Judicial Member or the Administrative Member, of the Bench to which he is appointed, the functions of the Judicial Member or the Administrative Member of any other Bench.

51. Section 5(4)(b) empowers the Chairman to transfer a Member from one Bench to another Bench, and Section 5(4)(c) enables the Chairman to authorize the Judicial Member or the Administrative Member of one Bench to discharge the duties and functions of Judicial Member or Administrative Member, as the case may be, of any other Bench. The Chairman can also constitute Benches of more than two Members having regard to the nature of the cases involved, by issuance of general or special orders.

52. Section 5(6) enables the Chairman or any other Member authorized by the Chairman to function as a Single Bench and exercise jurisdiction, powers and authority of the Tribunal in respect of such classes of cases or such matters pertaining to such classes of cases as the Chairman may by general or special order specify.

53. The proviso to Section 5(c) of the Act states that if at any stage of hearing of any such case or matter it appears to the Chairman or the Member functioning singly that the case or

matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairman, or as the case may be, referred to him for transfer to such Bench as the Chairman may deem fit.

54. A perusal of Section 5 indicates that the Chairman is empowered to discharge administrative functions of constituting Benches by transferring a Member from one Bench to another, authorizing the Judicial Member or the Administrative Member appointed to one Bench to discharge the functions of Judicial Member or Administrative Member of another Bench.

55. Sub-section (6) of Section 5 empowers the Chairman or any other Member authorized by the Chairman to sit singly to exercise jurisdiction, powers and authority of the Tribunal only in respect of such classes of cases or such matters pertaining to such classes of cases as the Chairman might, by general or special orders specify. The aforesaid provision does not enable the Chairman sitting singly to nullify orders passed by a larger Bench.

56. Section 24 of the Act limits the power to pass interim order whether by way of injunction, stay or otherwise by imposing conditions on the exercise of such power. No interim order is to be made unless copies of the application along with documents in support of the plea for interim order are furnished to the

party against whom such application is made and opportunity to be heard is given to such party.

57. The aforesaid condition can only be dispensed with in exceptional cases, if the Tribunal is satisfied, for reasons to be recorded in writing, that it is necessary to pass an interim order for preventing any loss to the applicant which cannot adequately be compensated in money. The interim order, in such case is to be of maximum duration of fourteen days unless the requirements of sub-sections (a) and (b) are complied with, before the expiry of fourteen days and the interim order is extended.

58. The power under Section 25 of the Act to transfer cases from one Bench to another is essentially an administrative power of the Chairman of CAT. Such power is to be exercised by the Chairman on his own motion or on the application of any of the parties after notice to the parties, and after hearing such of them as he may desire to be heard. The Chairman may, on his motion, transfer any case pending before one Bench to another without notice.

59. A careful reading of Section 25 of the Act makes it clear that the Chairman deciding the question of whether a matter should be transferred from one Bench to another cannot grant interim stay of proceedings, there being no power conferred on the Chairman under the said section to pass such interim stay.

60. Power under Section 24 to grant interim orders has been conferred on the Tribunal, and/or in other words, a Bench of the Tribunal in seisin of proceedings in respect of which the Bench is entitled to exercise the jurisdiction and powers of the Tribunal.

61. A Tribunal created under the Act as also its Chairman derives its powers from the Act and can only exercise such powers as are conferred by the Act. The Chairman of the Tribunal exercising its power under Section 25 of the Act does not function as a Tribunal. The proposition that the power to grant interim relief must expressly be provided by statute finds support from the judgment of the Supreme Court in ***Morgan Stanley Mutual Fund vs. Kartick Das***¹⁰. The Chairman of CAT does not have power under Section 25 to pass any interim order of stay of proceedings pending before a Bench of the Tribunal.

62. A careful reading of the provisions of the Act and in particular Sections 14 and 15 thereof in juxtaposition with Article 323A of the Constitution leaves no manner of doubt that an Administrative Tribunal constituted under the Act to give effect to Article 323A of the Constitution exercises all the jurisdiction powers and authority exercisable by all the Courts before commencement of the Act and has all the attributes of a Court of law except that it is not bound by the strict rules of procedure embodied in the Civil Procedure

10 (1994) 4 SCC 225

Code or the strict rules of evidence prescribed by the Evidence Act, as observed above. All norms of judicial propriety and judicial discipline apply as much to the Tribunal as to Courts including the High Court.

63. A judicial order passed by a Tribunal is binding on all concerned, including the Tribunal itself on its administrative side, unless set aside or modified by a higher forum in exercise of appellate or revisional powers. In no circumstance, can a judicial order of a Bench of the Tribunal be nullified or rendered nugatory by its Chairman.

64. In view of Section 12 of the Act, the Chairman of the Tribunal can only exercise financial and administrative powers over the Benches as may be vested under the Rules. The Chairman may thus constitute Benches, shift members from one Bench to another, constitute Single Benches, Division Benches and even larger Benches, allocate business to the Benches and even transfer cases from one Bench to the other, but having done so he cannot interfere with the functioning of the Benches or tinker with its orders by passing interim orders in a transfer petition.

65. In any case, judicial decorum and propriety demands that a judicial order, ad interim, interim or final be vacated, varied, modified, recalled or reviewed by a Bench of coordinate strength or larger strength or a higher forum, but not a smaller Bench of lesser strength, except in cases where such authority to a lower forum and/or smaller Bench is expressly conferred or implicit in the order

sought to be vacated, varied, modified, recalled or reviewed.

66. In ***Union of India and Anr. vs. K. S. Subramanian***¹¹ , the Supreme Court observed that the proper course for a High Court was to try to find out and follow the opinion expressed by larger benches of this Court in preference to those expressed by smaller Benches of the Supreme Court and that was the practice also to be followed by the Supreme Court itself. The practice has now crystallized into a rule of law declared by the Supreme Court. A similar view was taken by the Supreme Court in ***Bharat Petroleum Corporation Ltd. vs. Mumbai Shramik Sangha & Ors.***¹². A five Judge Constitution Bench of the Supreme Court observed that the decision of a Constitution Bench of the Supreme Court would bind a Bench of two judges of the Supreme Court and that judicial discipline obliged them to follow it, regardless of their doubts about its correctness.

67. It is true that the interim order passed by a Court does not operate as a precedent and the law declared by the Supreme Court with regard to the precedential value of judgments of Benches of larger strength may not operate as a binding precedent in the facts and circumstances of this case. The judgments referred to in the preceding paragraphs lay down the norms of judicial decorum and propriety which give

11 (1976) 3 SCC 677

12 (2001) 4 SCC 448

precedence to Benches of higher strength. There is no reason at all why the same principles should not apply even to interim orders in pending proceedings.

68. An interim order passed by a court, on consideration of the *prima facie* case made out by an applicant, should ordinarily have been vacated by a Bench of coordinate strength after giving open notice to the applicant. If the Chairman was of the considered opinion that there was urgency in the application for vacating the interim order, the Chairman ought to have assigned the application for vacating and/or vacation of the interim order to a Bench of two or more Members to consider whether the interim order should continue or be vacated. The Chairman could also have exercised his power to suo motu transfer the proceedings to another Bench without prior notice. The order of stay of the proceedings before the Nainital Bench is without jurisdiction and unsustainable in law.

69. Neither the judgment of the Constitution Bench of this Court in ***L. Chandra Kumar*** (supra) nor the judgment of the Division Bench of this Court in ***Dr. Mahabal Ram vs. Indian Council of Agricultural Research and Others*** is an authority for the proposition that the Chairman of CAT, sitting singly to decide on application for transfer under Section 25 of the Act, can stay the proceeding before a two Member Bench or interfere with the orders of a two Member Bench.

70. In ***L. Chandra Kumar*** (supra), cited on behalf of the appellant, a Constitution Bench of seven Judges of the Supreme Court held that the power of judicial review vested in the High Court under Article 226 and in the Supreme Court under Article 32 of the Constitution was an integral and essential feature of the Constitution constituting part of its basic structure. Ordinarily, therefore, the power of the High Courts and the Supreme Court to test the constitutional validity of legislations could never be ousted or excluded. The power vested in the High Court to exercise judicial superintendence over the decision of all Courts and Tribunals within their respective jurisdictions was also part of the basic structure of the Constitution. Further, in ***L. Chandra Kumar*** (supra), this Court upheld the vires of Section 5(6) of the Act observing that Section 5(6) could harmoniously operate with Section 5(2) in view of the proviso to Section 5(6). This Court also held that the Tribunals are even competent to hear matters where vires of statutory provisions are questioned, except where the vires of their parent statute is in question, following the settled principle that a Tribunal which is the creature of a statute cannot declare that very statute to be unconstitutional. In such cases alone, the High Court might be approached directly. However, in discharging the duty of deciding vires of statutory provisions, Tribunals cannot act as substitute for the High Courts and the Supreme Court. Their function is

supplementary and all such decision of the Tribunals would be subject to scrutiny before the Division Bench of the respective High Courts.

71. In ***L. Chandra Kumar*** (supra) this Court held that whenever any question involving the interpretation of a statutory provision or rule in relation to Constitution arose for consideration of a Single Bench of the Administrative Tribunal, the provision to Section 5(6) would automatically apply and the Chairman or the member concerned would be obliged to refer the matter to a Bench consisting of at least two members one of whom must be a judicial member. This would ensure that questions involving vires of statutory provisions or rules would never arise for adjudication before a Single Member Bench or a Bench which does not consist of a judicial member. So construed, Section 5(6) would no longer be susceptible to charges of unconstitutionality and, therefore, valid and constitutional.

72. In ***Dr. Mahabal Ram vs. Indian Council of Agricultural Research and Others***¹³, the Supreme Court held that sub-sections (2) and (6) appearing as limbs of the same Section 5 of the Act, have to be harmoniously construed. While allocating work to a single Member, whether Judicial or Administrative in terms of sub-section (6), the Chairman should keep in view the nature of the litigation and where questions of

13 . (1994) 2 SCC 401

law or interpretation of constitutional provisions are involved, they should not be assigned to a single Member. It would be open to either party appearing before the single Member to suggest to that Member hearing the matter that it should go to a Bench of two Members. The Member should ordinarily allow the matter to go to a Bench of two Members when so requested. However, the contention that the single Member contemplated under sub-section (6) had to mean a Judicial Member only, was not accepted. In **Dr. Mahabal Ram** (supra), the question was whether a Bench consisting of a single Member under Section 5(6) necessarily had to be a Bench comprising of a judicial member.

73. In our considered view, the Division Bench rightly allowed the writ petition. The Chairman, like the Chief Justice of the Higher Courts or the Chief Judge of subordinate courts, may be higher in order of protocol and may have additional administrative duties and responsibilities. However, the Chairman, acting judicially, is equal to any other Member. The Chairman, being one amongst equals, could not have stayed proceedings pending before a larger Bench. We find no grounds to interfere with the reasoning of the High Court. The High Court rightly allowed the writ petition with costs. Since we have upheld the order of the Division Bench of the High Court under appeal and held that the order of the Chairman of CAT staying proceedings before the two member Bench was without

jurisdiction and unsustainable in law, we need not go into the various other contentions raised on behalf of the respondent no.1.

74. The appeal is dismissed with costs, quantified at Rs.25,000/-, to be deposited with the Supreme Court Legal Services Committee within four weeks from the date.

.....J.
(R. BANUMATHI)

.....J.
(INDIRA BANERJEE)

**NEW DELHI
FEBRUARY 01, 2019**