



**REVISITING THE L. CHANDRA
KUMAR JUDGMENT AND
DETERMINING THE
CONSTITUTIONALITY OF ARTICLE
323**

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INTRODUCTION

The legislature in order to reduce the burden with regard to service litigation before the Supreme court of India and of the High courts, were looking for a separate mechanism. The reason for the same being that, there were lot of pending cases with regard to service litigation and that they had to be redressed as quickly as possible.

Therefore in 1958 the *Law commission* recommended for the establishment of the tribunal that shall consists members from the legal as well as from the administrative fraternity. In 1975 the *Swarn Singh committee*, In 1969 the *Administrative Reform Commission* and lastly in the case of *K.K Dutta v Union of India*¹ in 1980 recommended that they should be a necessary establishment of tribunals in order to reduce the burden from avalanche of writ petition and appeals in service matters in the courts.

The legislature/parliament because of the recommendations amended the constitution for the 42nd time in 1976, in order to insert Article 323-A and 323B, These articles dealt with setting up of tribunals and these articles

were enshrined in part XIV-A of the constitution and was termed as ‘Tribunals’, After which there were many kind of appeals filled in front of the supreme court and of the high court where the constitutionality of article 323 was questioned upon. Therefore on the 18th of March of 1997 the Supreme Court of India in its 7-judge bench finally decided on the constitutionality of article 323 of the constitution of India in the case of *L.Chandra Kumar v Union of India*².

This paper is divided into two parts, the first part deals with the summary of the case and the second part deals with the critical analysis of the case.

PART I

This case came in front of the court due to a lot special leave petitions, civil appeals and writ petitions challenging the constitutional validity of Article 323-A and sub clause (d) of clause (3) of Article 323-B of the constitution of India. Therefore the Supreme Court in all together grouped all these matter into one case for the purpose of adjudication upon them.

One more question that was to be answered in this case was the question of ‘whether the High Courts can be substituted and be discharged with regard to their power of judicial review, by the tribunals which were constituted under part XIV of the constitution of India 1950’.

¹ K.K Dutta v Union of India, AIR1980 SCR (3)811

²L. Chandra Kumar v Union of India, AIR 1997 S.C. 1125



The seven-judge bench of the Supreme Court held in this case that High court's power to judicial review or rather to say the supervisory jurisdiction of the High Court under article 226 is part of the "inviolable basic structure of the constitution". This is also true with regard to the supreme courts power to judicial review under article 32.

The court further held that each and every decision of the tribunals, which were constituted under article 323A and 323B, would be under the scrutiny of the High courts writ jurisdiction. The court on article 323 held that, clause 2(d) of article 323A and clause 3(d) of article 323B are against the basic essence of the constitutions therefore they are to be termed as unconstitutional because these provisions essentially ousts the power of judicial review of high court under 226 and the supreme court under 32³, thus it was held that the courts supervisory power cannot be curtailed by any statutory provision, or constitutional provision added to the constitution after KesavanandaBharti⁴ in 1972 .

Adding upon this the supreme court also held that judicial review is part of the basic feature of the constitution which means that if any amendment is made to the constitution which oust the judicial review power of the courts it shall be declared as unconstitutional and finally held that judicial review cannot be abrogated by the creation of tribunal under 323A and 323B "Any

institutional mechanism or authority in negation of judicial review is destructive of the basic structure"⁵.

PART II

CASE ANALYSIS

The supreme court holding was not quite pragmatic in this very case, Here the Supreme Court was much more concerned about reinstating the High court and the Supreme court's power of judicial review under article 226 and 32, which per se were ousted by the S.P. Sampath Kumar Judgment⁶, and not on strengthening the *Droit administratif* principle in India, which was the original intention of the legislators through the 42nd amendment act.

The most important thing to be understood by this case was that the supreme court did not delve into finding an effective remedy for proper functioning of the tribunal and rather it just held that any judgment rendered by the tribunal will be under constant scrutiny of the high court through article 226 and supreme court under 32 and this was held irrespective of the fact that the huge backlog of cases in the high court, still persists.

⁵ M.P Jain and S.N Jain, Principle of Administrative law (8th edition, 2016), Vol 2, Chapter XXXIV, Pg2257-2258

⁶ S.P. Sampath Kumar v Union of India, AIR 1987 SC 2292

(The court in this case held that the idea underlying Article 323A and 323B was that the tribunals established under thereunder will practically have the same status as the high court, as appeals from these tribunals could go to the Supreme Court under Article 136).

³ M.P Jain and S.N Jain, Principle of Administrative law (8th edition, 2016), Vol 2, Chapter XXXIV, Pg2257-2258

⁴ KesavanandaBharti v State of Kerala, (1974) 1 SCC (JI) 3



Is the High court's power to judicial review is as inviolable as that of the Supreme Court?

The whole case of L. Chandra Kumar runs on the basic assumption by the courts that article 226 which grants the high court the power to judicial review forms an essential and inviolable part of the basic structure doctrine which evolved from the *KeshvanadaBharti* case⁷, but in my opinion the Power of the high court to judicial review exercised under 226/227 is not as absolute or inviolable as that of the power of the Supreme court under Article 32 due to the fact that Article 32(4) as mentioned below:

*"The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution"*⁸

This provision of the article essentially talks about the absoluteness and consolidates Supreme Court's power to judicial review and a similar provision as to that of Article 32(4) is absent in Article 226 of the constitution.

Therefore in my opinion the judgment in *S. P. Sampath Kumar's* case where the Supreme court held that the establishment of the tribunal, is a mere substitute to the high court and is not supplement to it, is actually in good understanding or rather to say in tune with the basic essence of the constitution.

⁷KesavanandaBharti v State of Kerala,(1974) 1 SCC (JI) 3

⁸ Article 32(4), Constitution of India 1950

Did the L. Chandra Kumar judgment clearly overrule the S.P.Sampath Kumar judgment?

A very interesting observation to note about *L.Chandra Kumar* case was that,it did not per se overrule the judgment of *S.P.SampathKumar*, because the courts in this case, did not negate the validity and the necessity of a tribunal. As this case accepted the illustrious idea behind setting up of a tribunal and that being:

- 1) The need for a speedy disposal of cases.
 - 2) The requirement of an expert person in certain exceptional situation that calls for specialized categories of dispute settlement.
 - 3) In order for reducing the prolonged delay in effective judgment because "Justice delayed is justice denied".
 - 4) Lastly, for reducing the burden of high court.
- But still at the end it held that these cases would under the scrutiny of the high courts, which will eventually defeat the basic rationale behind the formation of these tribunals at the first place.

DroitAdministratiff in India ?

The L.Chandra Kumar ruling deviated from the original intention of the legislature behind the 42nd constitutional Amendment. The legislature through this amendment purported to establish tribunals specifically for adjudicating the disputes related to service matter. The intention of this move by the legislature was to create institutions such as the *Counseild'etat* and the object being to



ease the burden of pending cases related to service sector from the high court and rather provide an expert and expeditious forum for disposal of disputes of Government servants relating to service matters.⁹ The critics of the 42nd amendment termed this implementing concept of *Droit Administratif* as positive change.

The court in the case of *L. Chandra Kumar* case held that, an appeal from the decision of tribunal could reach a high court under article 226, and further can knock the door of the Supreme Court under article 32. This process would inevitably make these cases pending for a longer time. Irrespective of the fact that this process sounds good on paper that the idea of justice and the concept of rule of law is protected, But for a person who is expected to work with the government and assist them, it is highly unfeasible for him to continue lingering in front of the courts reason being that the civil courts are engrossed and strictly adhere to rules of pleading and evidence and, this type of strict procedure is not required while dealing with cases pertaining to service sector.

An interesting thing to note here is that if service tribunals are deemed as the final arbiter with respect to controversies like, conditions of services, on the question of seniority, may save the courts from the avalanche of writ petitions and appeals in service matters. These proceedings of such tribunals can have the merit of

⁹See the Statement of Objects and Reasons, accompanying the Forty-fourth Amendment Bill (later renumbered as the Forty-Second Amendment Act of the Constitution.)

informality and they will not be tied down to strict rules of evidence, they might be able to produce solutions, which will satisfy many and displease only a few¹⁰. This might also relieve the high court from pending cases dealing with service sector and that they can adjudicate before an institutions

At the end I would like to state that I do agree with the fact that a complete adaptation of *Droit Administratif* is not possible in India because of the power of judicial review of the supreme court of the order rendered by the tribunals, cannot be fully removed as we know that power to judicial review is an integral part of our constitution system, and without it the rule of law would become illusory but if a adequate alternative mechanism which could replace the judicial power of the high court is brought in which can effectively adjudicate upon specific matters with much more expertise, then such alternative mechanism should be welcomed

A line of apperception for the judgment.

All being said about the judgment but at one point I agree with the *L. Chandra Kumar* case, with respect to functionality and quality of justice with which the judges were quite upset with, and to some extent it was justified as well because In my opinion the judges in *L. Chandra Kumar* case were correct where they held that, while the tribunal are dealing with case regarding article 14,15,16 the chairman's of the tribunals lack a certain element of legal training therefore the composition of the

¹⁰Kamal Kanti Dutta v. Union of India, (1980) 4 SCC 38



tribunal needs special attention and there is certainly no doubt in the fact that measure are to be taken with respect to the composition ,qualification and the mode of appointment of the members in tribunal.

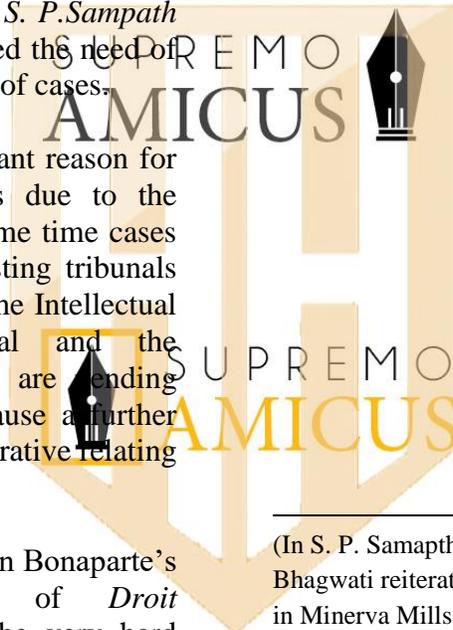
CONCLUSION

The journey of these two landmark case one being *S. P.SamapathKumar* case and the other being *L. Chandra Kumar* case has certainly not being sterile, to put it very blatantly the case of *L Chandra Kumar* has not overruled the judgment of *S. P.Samapath Kumar* rather it has necessitated the need of tribunal for speedy disposition of cases.

It has also said that an important reason for the creation of tribunal was due to the backlog of cases but at the same time cases where the functioning of existing tribunals are being questioned such as the Intellectual Property Appellate Tribunal and the National Green Tribunal and are pending before the courts and may cause a further shift in the evolution of the narrative relating to tribunals¹¹.

Its too late to shift to Napaolean Bonaparte’s most applauded concept of *Droit administraiff*,because it will be very hard and highly cumbersome to reform the whole judiciary but still a partial application of the *Droit administratiff* like the establishment of an alternative institutional mechanism¹² which will be much more efficacious than

the high courts and it will go a long way in solving the judicial prolonged problem of backlog of cases as it now accepted in all common law countries and as well as in continental legal systems and the example for the same would be of the UK, and Australia as it is been witnessed here as well that tribunalisation can be integrated for the sound performance of a country’s judiciary.



(In *S. P. Samapth Kumar* case, Chief Justice Bhagwati reiterated the earlier view expressed by him in *Minerva Mills v. UOI* about the power of Parliament to set up effective alternative institutional mechanism or arrangements for judicial review by amending the Constitution. If, by such constitutional amendment, the power of judicial review of the high-court is taken away and vested “in any other institutional mechanism or authority, it would not be violative of the basic structure doctrine, so long as the essential condition is fulfilled, i.e., the alternative institutional mechanism or authority set up by Parliamentary amendment is no less effective than the high-court.”)

¹¹SujitChoudhry, MadhavKhosla, PratapBhanu Mehta: *The Oxford Handbook of the Indian Constitution* (1st edition, 2016)

¹²*Minerva Mills v. UOI*, AIR 1986 SC 2030