



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 9868 / 2024

Shri Guru Gobind Singhji Institute
of Engineering and Technology,
Vishnupuri, Nanded
Through its Director
Dr. Mahesh B. Kokare

..Petitioner

M/s. Kay Vee Enterprises,
Main Road, Khamanghat,
Rangareddy, Hyderabad
Through its Proprietor
Chandrashekhar Reddy

.. Respondent

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Advocate for the Petitioner : Mr. A.V. Anturkar Sr. Counsel a/w
Mr. S.V. Adwant, Mr. H.S. Adwant and Mr. Pallav Sinha; Mr.
Atharva Date; Mr. Kashish Chelani and Ms. Arya Deshpande

Advocate for Respondents : Mr. Sachin S. Deshmukh

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**CORAM : S.G.MEHARE &
SHAILESH P. BRAHME, JJ.**

RESERVED ON : 22 NOVEMBER 2024

PRONOUNCED ON : 09th DECEMBER 2024

JUDGMENT [Per Shailesh P. Brahme, J.] :

. Heard Learned Senior Counsel Mr. A.V. Anthurkar along
with the S.V. Adwant for the petitioner and Mr. Sachin S.
Deshmukh for the respondents.

2. This writ petition has travelled from Single Judge to the
Division Bench presided over by Justice Shri Mangesh.S. Patil

and then to our Bench. As per the report of learned Registrar (Judicial), the matter is placed before us, according to the roster. The parties are ad idem that matter lies before Division Bench and we have the assignment to hear the matter.

3. Learned Mr. Sachin S. Deshmukh appearing for the respondent raised preliminary objections regarding maintainability of the petition. Therefore we heard both sides on maintainability only.

4. Before advertng to the rival submissions of the parties, it is expedient to disclose the nature of the proceedings and the reliefs claimed.

5. The respondent was selected through tender process by the petitioner for constructing building for ladies hostel and extension work of electrical buildings. The work was completed and then disputes were started between the parties on account of payment of the work done.

6. The respondent invoked arbitral clause of the agreement between the parties. By indulgence of the Learned Single Judge a sole arbitrator was appointed. The petitioner submitted application under Section 16 (2) of the Arbitration and Conciliation Act of 1996 (hereinafter referred to as 'Act' for the sake of brevity and convenience) for framing preliminary issue of limitation. It was rejected.

7. Being aggrieved, **Writ Petition No. 7278 of 2023** was filed. It was also rejected and the matter was carried to the Supreme Court. Supreme Court rejected SLP, vide order dated 10.11.2023, granting liberty to raise the plea. Then the arbitrator passed interim orders on various dates which are subjected to challenge in present petition vide prayers clause 37 (b) to (g). Prayer clause (h) pertains to termination of mandate of the arbitral tribunal. Remaining prayers are consequential in nature. The maintainability of the petition needs to be adjudged on the basis of prayers (a) to (h).

8. Learned counsel Mr. Sachin S. Deshmukh made following submissions.

i) The substantive petition claiming relief in prayer clause 37 (b) to (f) is not maintainable in view of Section 34 of the Act. The jurisdiction of the High Court under Article 226 and 227 of the Constitution of India is ousted.

ii) In view of ratio laid down by Constitutional Bench of the Supreme Court in the matter of M/s. S.B.P and Company Vs. Patel Engineering Ltd. And Another (2005) 8 SCC 618, the High Court can not interfere with the orders passed by the arbitrator during the course of arbitration. The petitioner has to wait till the final award is pronounced. There is alternate and statutory remedy under Section 34 of the Act.

iii) The prayer clause 37(h) is in respect of Section 14 of the Act. There are no grounds to invoke Section 14 and the petition is liable to be dismissed because the allegation of the petitioner is outside of the purview of Section 14.

iv) Petitioner made successive applications raising ground of limitation. In the wake of earlier decision of learned Single Judge in Writ Petition No. 7278 of 2023 which is confirmed by the Supreme Court, it is impermissible to agitate the issue of limitation.

v) The conduct of the petitioner is objectionable and dishonest which is already noticed in earlier round of litigation in paragraph No. 10 of the order dated 04th October, 2023 in Writ Petition No. 7278 of 2023.

vi) The petitioner wants to protract the proceedings and therefore various interlocutory orders are challenged. Even the procedure adopted by the arbitrator and his impartiality has also been castigated with oblique motive.

vii) The reference of the parties in Arbitration Application No. 10 of 2022 was to the original status and the respondent or his lawyer was not acting on behalf of the arbitrator.

9. In reply to the submissions of the respondent, learned Senior Counsel Mr. A.V. Anthurkar advanced following submissions.

a) The powers of judicial review under Article 226 and 227 of the Constitution of India forms integral part of basic structure of the constitution. It cannot be taken away either by the Act or by the judgment of the Supreme Court, be that of Constitutional Bench.

b) The judgment relied upon by the respondent in the matter of **M/s. S.B.P and Co. Vs. M/s. Patel Engineering Ltd. And Anr 2005 AIR SCW 5932** is not a ratio for the proposition that jurisdiction of judicial review of the High Court is excluded.

Earlier seven judges bench judgment in **L. Chandra kumar vs. Union of India and others (1997) 3 SCC 261** lays down correct proposition of law.

c) Judgment of the Supreme Court in **L. Chandra kumar (supra)** actually clinches the issue involved in the matter and states the parameters of judicial review of the High Court. It has to be preferred than later judgment of Supreme Court in the matter of **S.B.P (supra)**.

d) Reliance is placed on the judgment of **Union of India vs. Dhanwanti Devi and Others (1996) 6 SCC 44** to buttress that judgment in **M/s. S.B.P (supra)** is not ratio.

e) The petitioner has no alternate efficacious remedy for the injustice and hardship caused due to the interlocutory orders and due to the conduct/ *Modus Operandi* of arbitrator. The remedy under Section 34 operates in narrow sphere and does not resolve the present grievances.

f) The forum under Section 34 would not go beyond record of the Arbitrary Tribunal.

g) The arbitrator is biased which can be demonstrated from proceedings of Arbitration Application No. 10 of 2020. There are shocking circumstances to demonstrate malice and bias of the arbitrator which can be looked into by High Court under its supervisory jurisdiction which are even beyond provisions of Section 14 of the Act.

h) It would be the discretion of the High Court whether to grant any relief to the petitioner or not. But doors of the High Court can not be shut for the petitioner.

i) It is impermissible at this juncture to examine the allegations made against the petitioner in respect of repetitive attempts for raising plea of limitation or the alleged conduct of the petitioner or its malafides. This can be gone into, once the matter is examined on its merit.

i) Reliance is placed on **Hyder Consulting (UK) Ltd. vs. Governor, Punjab State Power Corporation Limited versus Emta Coal Limited and another (2020) 17 SCC 93, State of Orissa (2015) 2 SCC 189, Dr. Shah Faesal and Others vs. Union of India and Another (2020) 4 SCC 1, State of Himachal Pradesh and Others versus Yogendra Mohan Sengupta and Another 2024 SCC Online SC 36.**

10. We heard both Learned Counsels. Undisputedly the orders which are challenged in the present petition passed by Arbitral Tribunal are interlocutory which are covered by prayer Clause 37 (a) to (g). Prayer clause 37 (h) is altogether different which is similar to Section 14 of the Act. The matter is still pending before sole arbitrator. The petitioner is relying on 7 Judges bench judgment of L. Chandra kumar (supra) whereas the respondent is relying on the judgment of M/s. S.B.P (supra) of equal strength.

11. Learned counsel for the respondent referred to judgment of **M/s. S.B.P and Co.(supra)**. The majority view was taken by Honourable six Judges and minority one was taken by

Hon'ble Shri Justice C.K. Thakkar. Following are the relevant paragraphs :

44. It is seen that some High Courts have proceeded on the basis that any order passed by an arbitral tribunal during arbitration, would be capable of being challenged under [Article 226](#) or 227 of the Constitution of India. We see no warrant for such an approach. [Section 37](#) makes certain orders of the arbitral tribunal appealable. Under [Section 34](#), the aggrieved party has an avenue for ventilating his grievances against the award including any in-between orders that might have been passed by the arbitral tribunal acting under [Section 16](#) of the Act. The party aggrieved by any order of the arbitral tribunal, unless has a right of appeal under [Section 37](#) of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The arbitral tribunal is after all, the creature of a contract between the parties, the arbitration agreement, even though if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the arbitral tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the arbitral tribunal is capable of being corrected by the High Court under [Article 226](#) or 227 of the Constitution of India. Such an intervention by the High Courts is not permissible.

45. The object of minimizing judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under [Article 227](#) of the Constitution of India or under [Article 226](#) of the Constitution of India against every order made by the arbitral tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the arbitral tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under section [37](#) of the Act even at an earlier stage.

46. We, therefore, sum up our conclusions as follows:

- i) The power exercised by the Chief Justice of the High Court or the Chief Justice of India under [Section 11\(6\)](#) of the Act is not an administrative power. It is a judicial power.
- ii) The power under [Section 11\(6\)](#) of the Act, in its entirety, could be delegated, by the Chief Justice of the High Court only to another judge of that court and by the Chief Justice of India to another judge of the Supreme Court.
- (iii) In case of designation of a judge of the High Court or of the Supreme Court, the power that is exercised by the designated, judge would be that of the Chief Justice as conferred by the statute.

(iv) The Chief Justice or the designated judge will have the right to decide the preliminary aspects as indicated in the earlier part of this judgment. These will be, his own jurisdiction, to entertain the request, the existence of a valid arbitration agreement, the existence or otherwise of a live claim, the existence of the condition for the exercise of his power and on the qualifications of the arbitrator or arbitrators. The Chief Justice or the judge designated would be entitled to seek the opinion of an institution in the matter of nominating an arbitrator qualified in terms of [Section 11\(8\)](#) of the Act if the need arises but the order appointing the arbitrator could only be that of the Chief Justice or the judge designate.

(v) Designation of a district judge as the authority under [Section 11\(6\)](#) of the Act by the Chief Justice of the High Court is not warranted on the scheme of the Act.

(vi) Once the matter reaches the arbitral tribunal or the sole arbitrator, the High Court would not interfere with orders passed by the arbitrator or the arbitral tribunal during the course of the arbitration proceedings and the parties could approach the court only in terms of [Section 37](#) of the Act or in terms of [Section 34](#) of the Act.

(vii) Since an order passed by the Chief Justice of the High Court or by the designated judge of that court is a judicial order, an appeal will lie against that order only under [Article 136](#) of the Constitution of India to the Supreme Court.

(viii) There can be no appeal against an order of the Chief Justice of India or a judge of the Supreme Court designated by him while entertaining an application under [Section 11\(6\)](#) of the Act.

(ix) In a case where an arbitral tribunal has been constituted by the parties without having recourse to [Section 11\(6\)](#) of the Act, the arbitral tribunal will have the jurisdiction to decide all matters as contemplated by [Section 16](#) of the Act.

(x) Since all were guided by the decision of this Court in *Konkan Railway Corpn. Ltd. & anr. Vs. Rani Construction Pvt. Ltd.* [(2000) 8 SCC 159] and orders under [Section 11\(6\)](#) of the Act have been made based on the position adopted in that decision, we clarify that appointments of arbitrators or arbitral tribunals thus far made, are to be treated as valid, all objections being left to be decided under [Section 16](#) of the Act. As and from this date, the position as adopted in this judgment will govern even pending applications under [Section 11\(6\)](#) of the Act.

(xi) Where District Judges had been designated by the Chief Justice of the High Court under [Section 11\(6\)](#) of the Act, the appointment orders thus far made by them will be treated as valid; but applications if any pending before them as on this date will stand transferred, to be dealt with by the Chief Justice of the concerned High Court or a Judge of that court designated by the Chief Justice.

(xii) The decision in Konkan Railway Corpn. Ltd. & anr. Vs. Rani Construction Pvt. Ltd. [(2000) 8 SCC 159] is overruled.

12. It is emphatically argued by Mr. Sachin Deshmukh that it is not permissible for the High Court to correct any order passed by Arbitral Tribunal under Article 226 and 227 of the Constitution of India. Once the arbitration has commenced, the parties have to wait till the award is pronounced. The remedy can be either under Section 34 or under Section 37 as the case may be. It is necessary to examine the certain facts which led the majority of Judges to pronounce the judgment in above matter.

13. The nature of the power under Section 11 (6) of the Act was under consideration and by majority it was held that the power exercised by the Chief Justice of High Court or Chief Justice of India under Section 11 (6) is judicial in nature and not administrative. The issue posed in the present matter as to exclusion of the judicial review of the High Court under Article 226 or 227 of the Constitution of India at the interlocutory stage of arbitral proceedings was not before the Supreme Court.

14. Learned Senior Counsel referred to unanimous seven Judges bench judgment of L. Chandra kumar (supra) which was earlier in time. By way of reference, the matter was heard by larger Bench and following questions of law were framed.

(1) Whether the power conferred upon Parliament or the State Legislatures, as the case may be, by Sub-clause (d) of Clause (2) of [Article 323A](#) or by Sub-clause (d)

of Clause (3) of [Article 323B](#) of the Constitution, 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 Articles 226/227 and on the Supreme Court under [Article 32](#) of the Constitution?

(2) Whether the Tribunals, constituted either under [Article 323A](#) or under [Article 323B](#) of the Constitution, possess the competence to test the constitutional validity of a statutory provision/rule?

(3) Whether these Tribunals, as they are functioning at present, can be said to be effective substitutes for the High Courts in discharging the power of judicial review? If not, what are the changes required to make them conform to their founding objectives?

15. It is necessary to examine for what purpose and how the matter had reached larger Bench in *L. Chandra kumar* (supra). The Tribunals are established under Article 323A and 323B of the Constitution of India. Accordingly, the Administrative Tribunal Act was legislated. Its Section 28 is as follows :

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, 3[no court except (a) the Supreme Court; or

(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 to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters.

16. In the matter of *S.V. Sampath Kumar* (supra), Supreme Court held that though judicial review is a basic feature of the constitution the vesting of power of judicial review in an

alternative constitutional mechanism after taking it away from the High Courts would not violate the basic structure so long as it was ensured that alternative mechanism was effective and real substitute for the High Court. Later on the Division Bench found that Sampath Kumar (supra) case would need fresh look by larger Bench over all the issues. Hence, the matter reached Constitutional Bench. The arguments were advanced for the proposition that the exclusion of jurisdiction of powers of the High Court under Article 226 and 227 of the Constitution of India violates the basic structure of the Constitution.

17. Learned Senior Counsel adverted our attention to following paragraphs of L. Chandra kumar vs. Union of India and others (supra)

76. To express our opinion on the issue whether the power of judicial review vested in the High Courts and into the Supreme Court under Articles 226/227 and 32 is part of the basic structure of the Constitution, we must first attempt to understand what constitutes the basic structure of the Constitution. The Doctrine of basic structure was evolved in [Kesavananda Bharati's](#) case. However, as already mentioned, that case did not lay down that the specific and particular features mentioned in that judgment alone would constitute the basic structure of our Constitution. Indeed, in the judgments of Shelat & Grover, JJ., Hegde & Mukherjee, JJ. and Jaganmohan Reddy, J., there are specific observations to the effect that their list of essential features comprising the basic structure of the Constitution are illustrative and are not intended to be exhaustive. In Indira Gandhi's case, Chandrachud, J. held that the proper approach for a Judge who is confronted with the question whether a particular facet of the Constitution is part of the basic structure, is to examine, in each individual case, the place of the particular feature in the scheme of our Constitution, its object and purpose, and the consequences of its denial on the integrity of our Constitution as a fundamental instrument for the governance of the country, (supra at pp. 751-752). This approach was specifically adopted by Bhagwati, J. in [Minerva Mill's](#) case (supra at pp. 671-672) and is not regarded as the definitive test in this field of Constitutional Law.

77. We find that the various factors mentioned in the test evolved by Chandrachud, J. have already been considered by decisions of various Benches of this Court that have been referred to in the course of our analysis. From their conclusions, many of which

have been extracted by us in toto, it appears that this Court has always considered the power of judicial review vested in the High Courts and in this Court under [Articles 226](#) and [32](#) respectively, enabling legislative action to be subjected to the scrutiny of superior courts, to be integral to our constitutional scheme. While several judgments have made specific references to this aspect [Gajendragadhkar, CJ in Special Reference case, Beg, J. and Khanna, J. in [Kesavananda Bharti's](#) case, Chandrachud, CJ and Bhagwati, J. in *Minerva Mills*, Chandrachud, CJ in *Fertiliser Kamgar*, K.N. Singh, J. in *Delhi Judicial Service Association*, etc.] the rest have made general observations highlighting the significance of this feature.

78. The legitimacy of the power of Courts within constitutional democracies to review legislative action has been questioned since the time it was first conceived. The Constitution of India, being alive to such criticism, has, while conferring such power upon the higher judiciary, incorporated important safeguards. An analysis of the manner in which the Framers of our Constitution incorporated provisions relating to the judiciary would indicate that they were very greatly concerned with securing the independence of the judiciary. These attempts were directed at ensuring that the judiciary would be capable of effectively discharging its wide powers of judicial review. While the Constitution confers the power to strike down laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement age of Judges as well as the mechanism for selecting Judges to the superior courts. The inclusion of such elaborate provisions appears to have been occasioned by the belief that, armed by such provisions, the superior courts would be insulated from any executive or legislative attempts to interfere with the making of their decisions. The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence. The constitutional safeguards which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the subordinate judiciary or to those who man Tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under [Articles 226](#) and in this Court under [Article 32](#) of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

18. To buttress the submission that the exclusion of the

judicial review is against basic structure of the Constitution laid down in **Keshavanand Bharti Vs. State of Kerala**, AIR 1973 SC 1461 emphasize is given to paragraph No. 78 and 79 which are as follows :

78. The legitimacy of the power of Courts within constitutional democracies to review legislative action has been questioned since the time it was first conceived. The Constitution of India, being alive to such criticism, has, while conferring such power upon the higher judiciary, incorporated important safeguards. An analysis of the manner in which the Framers of our Constitution incorporated provisions relating to the judiciary would indicate that they were very greatly concerned with securing the independence of the judiciary. These attempts were directed at ensuring that the judiciary would be capable of effectively discharging its wide powers of judicial review. While the Constitution confers the power to strike down laws upon the High Courts and the Supreme Court, it also contains elaborate provisions dealing with the tenure, salaries, allowances, retirement age of Judges as well as the mechanism for selecting Judges to the superior courts. The inclusion of such elaborate provisions appears to have been occasioned by the belief that, armed by such provisions, the superior courts would be insulated from any executive or legislative attempts to interfere with the making of their decisions. The Judges of the superior courts have been entrusted with the task of upholding the Constitution and to this end, have been conferred the power to interpret it. It is they who have to ensure that the balance of power envisaged by the Constitution is maintained and that the legislature and the executive do not, in the discharge of their functions, transgress constitutional limitations. It is equally their duty to oversee that the judicial decisions rendered by those who man the subordinate courts and tribunals do not fall foul of strict standards of legal correctness and judicial independence. The constitutional safeguards which ensure the independence of the Judges of the superior judiciary, are not available to the Judges of the subordinate judiciary or to those who man Tribunals created by ordinary legislations. Consequently, Judges of the latter category can never be considered full and effective substitutes for the superior judiciary in discharging the function of constitutional interpretation. We, therefore, hold that the power of judicial review over legislative action vested in the High Courts under [Articles 226](#) and in this Court under [Article 32](#) of the Constitution is an integral and essential feature of the Constitution, constituting part of its basic structure. Ordinarily, therefore, the power of High Courts and the Supreme Court to test the constitutional validity of legislations can never be ousted or excluded.

79. We also hold that the power vested in the High Courts to exercise judicial superintendence over the decisions of all Courts and Tribunals within their respective jurisdictions is also part of the basic structure of the Constitution. This is because a situation where the High Courts are divested of all other judicial functions apart from that of constitutional interpretation, is equally to be avoided.

19. We have also considered the further conclusions drawn by the Supreme Court in following paragraphs :

91. It has also been contended before us that even in dealing with cases which are properly before the Tribunals, the manner in which justice is dispensed by them leaves much to be desired. Moreover, the remedy provided in the parent statutes, by way of an appeal by special leave under [Article 136](#) of the Constitution, is too costly and inaccessible for it to be real and effective. Furthermore, the result of providing such a remedy is that the docket of the Supreme Court is crowded with decisions of Tribunals that are challenged on relatively trivial grounds and it is forced to perform the role of a First Appellate Court. We have already emphasised the necessity for ensuring that the High Courts are able to exercise judicial superintendence over the decisions of Tribunals under [Article 227](#) of the Constitution. In [R.K. Jain's](#) case, after taking note of these facts, it was suggested that the possibility of an appeal from the Tribunals on questions of law to a Division Bench of a High Court within whose territorial jurisdiction the Tribunal falls, be pursued. It appears that no follow-up action has been taken pursuant to the suggestion. Such a measure would have improved matters considerably. Having regard to both the afore-stated contentions, we hold that all decisions of Tribunals, whether created pursuant to [Article 323A](#) or [Article 323B](#) of the Constitution, will be subject to the High Court's writ jurisdiction under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular Tribunal falls.

93. Before moving on to other aspects, we may summarise our conclusions on the jurisdictional powers of these Tribunals. The Tribunals are competent to hear matters where the vires of statutory provisions are questioned. However, in discharging this duty, they cannot act as substitutes for the High Courts and the Supreme Court which have, under our constitutional setup, been specifically entrusted with such an obligation. Their function in this respect is only supplementary and all such decisions of the Tribunals will be subject to scrutiny before a Division Bench of the respective High Courts. The Tribunals will consequently also have the power to test the vires of subordinate legislations and rules. However, this power of the Tribunals will be subject to one important exception. The Tribunals shall not entertain any question regarding the vires of their parent statutes following the settled principle that a Tribunal which is a creature of an Act cannot declare that very Act to be unconstitutional. In such cases alone, the concerned High Court may be approached directly. All other decisions of these Tribunals, rendered in cases that they are specifically empowered to adjudicate upon by virtue of their parent statutes, will also be subject to scrutiny before a Division Bench of their respective High Courts. We may add that the Tribunals will, however, continue to act as the only courts of first instance in respect of the areas of law for which they have been constituted. By this, we mean that it will not be open for litigants to directly approach the High Courts even in cases where they question the

vires of statutory legislations (except, as mentioned, where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal.

99. In view of the reasoning adopted by us, we hold that Clause 2(d) of [Article 323A](#) and Clause 3(d) of [Article 323B](#), to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. [Section 28](#) of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of [Articles 323A](#) and [323B](#) would, to the same extent, be unconstitutional. 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. The Tribunals will, nevertheless, continue to act like Courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the concerned Tribunal. [Section 5\(6\)](#) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.

20. Thus, for the proposition submitted by Learned Senior Counsel that the powers of the judicial review of High Court under Article 227 can not be excluded has a substance. Under our Constitutional scheme, the Supreme Court and High Courts are the sole repositories of the powers of judicial review. Such a power being inclusive of power to pronounce upon the validity of statues, action taken and orders passed by individuals and bodies falling within the ambit of expression 'State' in Article 12 of the Constitution has only been entrusted to the Constitutional Courts i.e High Courts and Supreme Court.

21. Before following the above proposition, we have to be

skeptical to see as to what would be the effect of later judgment of the equal strength of the Supreme Court in the matter of M/s. S.B.P (supra) and as to whether judgment in L. Chandra kumar (supra) can still be made applicable or out of two which would be the correct position of law to be followed in a given facts and circumstances. For that purpose, we have to refer the next judgment cited by the petitioner in the matter of Dhanvanti Devi (supra). The relevant paragraph is extracted below paragraph :

9. Before advertng to and considering whether solatium and interest would be payable under the Act, at the outset, we will dispose of the objection raised by Shri Vaidyanathan that [Hari Kishan Khosla's](#) case is not a binding precedent nor does it operate as ratio decidendi to be followed as a precedent and per se per incuriam. It is not everything said by a Judge who giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well settled theory of precedents, every decision contain three basic postulates - [i] findings of material facts, is the inference which the Judge draws from the direct, or perceptible facts; [ii] statements of the principles of law applicable to the legal problems disclosed by the facts; and [iii] judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in decision is its ratio and not every observation found therein not what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a court has been decided is alone binding between the parties to it, but it, is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which, when it is clear what it was, is binding. It is only the principle [laid down in](#) the judgment that is binding law under [Article 141](#) of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and

circumstances of the case which constitutes its ratio decidendi.

22. The judgment of Dhanwanti Devi (supra) has been consistently followed by various Courts and by Supreme Court. It is followed in the matter of Dr. Shah Faesal and Others vs. Union of India and Another (supra) The relevant portion is paragraph 99. Recently it is followed in State of Himachal Pradesh and Others v/s. Yogendra Mohan Sengupta and Another 2024 SCC Online SC 36. Its paragraph no. 90 is as follows :

90. This Court, in the case of Dhanwanti Devi (supra) in paragraph 9, has held that it is not profitable to extract a sentence here and there from the judgment and to build upon it. It has been held that the essence of the decision is its ratio and not every observation found therein. It has been held that a deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue would constitute a precedent.

23. It is worth to notice that the predominant proposition advanced by learned counsel Mr. Rama Jois for the petitioner in **L.Chandrakumar** (supra) are recorded in para no. 41. The learned counsel Mr. Shanti Bhushan in para No. 42 canvassed the submission that the judicial review of High Court can not be excluded and it would offend basic structure of the Constitution. These submissions are repelled by learned Additional Solicitor General in paragraph No. 44 and by learned Counsel Mr. P.P.Rao in para no.45. After considering the submissions of the rival parties, what is observed is as follows :

50. We may now address the main issues which have been identified at the beginning of this judgment as being central to the adjudication of this batch of matters. This would involve an appreciation of the power of judicial review and an understanding of the manner and the instrumentalities through which it is to be exercised.

24. In the wake of the test laid down by Supreme Court in **Dhanwanti Devi** (supra) we are of the considered view that the ratio of **L. Chandrakumar** (supra) would apply. Its an authority directly on the point which is well addressed, analyzed and answered by reasoned judgment. As against this, in *M/s. S.B.P* (supra) the issue was nature of the function of The Chief Justice or its designate under Section 11 of the Act. Whether the jurisdiction of the High Court under Article 226 or 227 was excluded or not was not the direct question which fell for consideration before the Bench. The observations in paragraph no. 44 to 46 which we have already reproduced above, cannot be said to be ratio for proposition with which we are concerned. The purport of observation in paragraph no. 45 (vi) is to minimize the interference of High Court at interlocutory stages.

25. It is pertinent to note that the judgment of Supreme Court in *L. Chandra kumar* (supra) has not been referred in the said matter which is indicative of the fact that the proposition with which we are concerned was not the predominantly the issue before the Supreme Court in the later judgment. Therefore, with all respect we are of the considered view that we are bound by law laid down in *L. Chandra kumar* (supra). The later judgment of the Supreme Court would be of no avail to respondent to sustain objection.

26. It is relevant to notice that *L. Chandra kumar* (supra) has been followed in the matter of **Bhaven Construction versus Executive Engineer Sardar Sarovar Narmada Nigam Ltd.** And

another (2022) 1 SCC 75. The following is the relevant paragraph:

18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a Constitutional right. In *Nivedita Sharma v. Cellular Operators Association of India*, (2011) 14 SCC 337, this Court referred to several judgments and held:

“11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under [Article 226](#) of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation - [L. Chandra Kumar v. Union of India](#), (1997) 3 SCC 261. However, it is one thing to say that in exercise of the power vested in it under [Article 226](#) of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/ instrumentality or any public authority or order passed by a quasi- judicial body/authority, and it is an altogether different thing to say that each and every petition filed under [Article 226](#) of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

(emphasis supplied) It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear ‘bad faith’ shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient.

. Thus, though there cannot be exclusion of the judicial review by the High Court certain riders are imposed. It is imperative to examine the matters on merit in the wake of those riders.

27. Considering the legal position as discussed above by following the judgment in *L. Chandra kumar* (supra), we are of the considered view that our jurisdiction under Article 227 is not excluded from examining the validity of the interlocutory orders

for which prayers are made in paragraph 37 (a) to paragraph 37 (g).

28. So far as prayer clause 37 (h) is concerned, it is contended by the petitioner that the remedy under Section 34 is not efficacious. The petitioner wants to rely upon certain facts and circumstances to demonstrate that the arbitrator concerned is bias and unfair. The application under Section 34 would be considered on the basis of the record of the Arbitral Tribunal and not beyond that. The petitioners case is that they have material which is beyond the record of the Arbitral Tribunal. Our attention is adverted to proceedings of Criminal Application No. 10 of 2022 filed at the instance of the Arbitrator himself in the High Court. Later on the application was disposed of vide order dated 06th May 2024.

29. Learned counsel for the Respondent vehemently refuted the criticism of he having withdrawn application. It appears from the record that it was not the lawyer of the respondent who requested for leave to withdraw the application. We do not propose to go into the controversy any further.

30. The grievance of the petitioner touches to the Principles of Natural Justice which can not be overlooked just because the arbitration is in process. Whether Section 14 would be attracted or not or whether under the supervisory jurisdiction this Court can grant any relief would be decided on merit. But even for prayer clause 37(h), it would be unjust to shut the doors of the petitioner.

31. In view of our above analysis, we find that there is no substance in the objections raised by the respondent. The Preliminary Objections are overruled to the extent of maintainability of writ petition only. The matter needs to be examined on merits.

32. List this petition for further consideration on 16.01.2025.

SHAILESH P. BRAHME
JUDGE

S. G. MEHARE
JUDGE

V.S.J.