

Form No. J(2)

**IN THE HIGH COURT AT CALCUTTA**

Constitutional Writ Jurisdiction

(Appellate Side)

**W.P.A. NO 27327 OF 2025**

**MD. MASIDUL ISLAM**

**VS.**

**THE STATE OF WEST BENGAL & OTHERS**

**BEFORE: THE HON'BLE JUSTICE SAUGATA BHATTACHARYYA**

For the Petitioner :Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.  
Mr. Anindya Lahiri, Sr. Adv.  
Mr. Sudipta Dasgupta, Adv.  
Mr. Bikram Banerjee, Adv.  
Mr. Baibhav Roy, Adv.  
Mr. Subhomoy Paul, Adv.  
Mr. Anish Chakraborty, Adv.

For the State :Mr. Kishore Dutta, Ld. AG  
Mr. Bhaskar Prasad Vaisya, Ld. AGP  
Mr. Ranjan Saha, Adv.

For the PSC :Ms. Shraboni Sarkar, Adv.  
Ms. U. H. Khatun, Adv.

Hearing concluded on : 13.01.2026

Judgment on : 13.01.2026

**SAUGATA BHATTACHARYYA, J.:**

- 1) In the writ petition preliminary point of jurisdiction needs to be decided, i.e. when West Bengal Administrative Tribunal (for short,

“said Tribunal”) becomes non-functional due to non-availability of Chairman and members litigants on issues concerning State Government service are required to approach Single Bench of the High Court or Division Bench without approaching Single Bench. Court finds it necessary to decide aforesaid preliminary point first before considering merit of writ petition since writ petition has been filed before this Court and same is pertaining to State Government service.

2) Section 28 of the Administrative Tribunals Act, 1985 (hereinafter referred to as “said Act of 1985”) provides exclusion of jurisdiction of High Court in the matters of recruitment to any service or post or service matters concerning members of any service or persons appointed to any service or post. As per section 28 post decision of Tribunal issue was required to be agitated before the Hon’ble Supreme Court. Sections 14 and 15 of said Act of 1985 while providing jurisdiction, powers and authority of Central Administrative Tribunal and State Administrative Tribunals saved the jurisdiction of the Hon’ble Supreme Court but no other courts including High Courts.

3) Article 323-A (2)(d) of the Constitution excluded the jurisdiction of all courts including High Courts except the jurisdiction of the Supreme Court under Article 136 with respect to the disputes or complaints referred to in clause (1) of said Article. Therefore, on promulgation of said Act of 1985 High Courts did not have jurisdiction to entertain applications/ appeals against the decision of

the Tribunal and the issue was taken into consideration by the Hon'ble Supreme Court in **L. Chandra Kumar Vs. Union of Indian & Others**, reported in **(1997) 3 SCC 261**. Seven Judges Bench of the Hon'ble Supreme Court in paragraph 99 of **L. Chandra Kumar** (supra) finally enunciated law thereby declaring clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, 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 said Act of 1985 and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B were, to the same extent, declared to be unconstitutional. It was also observed in paragraph 99 that jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. According to the observations of the Supreme Court in paragraph 99 of **L. Chandra Kumar** (supra), jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution 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 Supreme Court also observed that the Tribunals created under the Articles 323-A and 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules and all decisions of these Tribunals will, however, be subject to scrutiny

before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Supreme Court further observed that the Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they were constituted and it would 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 Tribunal concerned.

4) In paragraph 91 of **L. Chandra Kumar** (supra) it was held that all decisions of Tribunals, whether created pursuant to Article 323-A or 323-B of the Constitution, would 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.

5) On the anvil of the ratio of **L. Chandra Kumar** (supra) Court is tasked to examine whether writ petition is required to be entertained by the Single Bench of High Court at the first instance or litigant should approach the Division Bench straightway when Tribunal becomes non-functional.

6) From the submissions made on behalf of the parties, it is indisputable that at present Tribunal is not functioning as vacancies of Chairman and other members are not filled up. Pitted against such odd, petitioner has approached this Court with the present writ

petition though the issue involved in this writ petition is required to be examined by the Tribunal at the first instance.

7) Mr. Bikash Ranjan Bhattacharyya, learned Senior Advocate representing the petitioner submits that as Tribunal is not functioning petitioner may be permitted to move this writ petition. It is further submitted that if petitioner is directed to move the Division Bench skipping over this Court in that event petitioner will lose a forum. In support of such contention, reliance is placed on **L. Chandra Kumar** (supra) and other decisions of the Hon'ble Supreme Court reported in **(2003) 6 SCC 581 (T.K. Rangarajan Vs. Government of T.N. & Others)** and **(2020) 6 SCC 1 (Rojer Mathew Vs. South Indian Bank Limited represented by its Chief Manager & Others)**. Placing reliance on observations made in **L. Chandra Kumar** (supra) in paragraphs 90, 91, 93, 94 and 99 it is contended on behalf of the petitioner that in order to approach the Division Bench under Articles 226/227 of the Constitution a decision of the Tribunal is required which forms a ground for exercising power of judicial review by the High Court. In absence of such decision litigant is required to approach the Single Bench of High Court.

8) In addition thereto, it is contended on behalf of the petitioner that Tribunal is playing supplemental role in discharging power conferred by Articles 226/227 of the Constitution by High Courts. In other words, Tribunal acts as court of first instance in respect of areas of law for which it has been constituted.

9) Reliance is also placed on behalf of the petitioner upon orders dated 19<sup>th</sup> December, 2025 passed by the Division Bench on intra-court appeal being **MAT 2211 of 2025 (Arnab Adhikari & Ors. Vs. State of West Bengal & Ors.)** and order dated 12<sup>th</sup> June, 2025 passed by the Division Bench on a writ petition being **WPST 4 of 2025 (Runu Ghosh Vs. The State of West Bengal & Ors.)**.

10) Mr. Kishore Dutta, learned Advocate General appears on behalf of State respondents and has submitted that in terms of said Act of 1985 jurisdiction of High Courts was not saved and in contradistinction thereto as per section 8 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997 (for short, "said Act of 1997") jurisdiction of Division Bench of High Court to entertain writ petition under Articles 226/227 was saved. Said Act of 1985 is relatable to Article 323-A whereas Act of 1997 is relatable to Article 323-B of the Constitution.

11) In the backdrop of law as laid down in **L. Chandra Kumar** (supra) restoring power of judicial superintendence of High Courts over Tribunals, but before the Division Benches, it has been submitted by learned Advocate General that the Hon'ble Supreme Court in spite of being aware of the position that in some High Courts writ petitions are admitted and finally heard by the Hon'ble Single Benches, directed exercise of judicial superintendence by the Division Benches of High Courts.

12) Another limb of submission advanced by the learned Advocate General is right to prefer appeal against the order of the Single Bench

is derived from clause 15 of the Letters Patent, subject to the conditions as delineated under clause 44. Relating to the point agitated on behalf of the petitioner that in the event petitioner is directed to approach the Division Bench with the writ petition petitioner would lose a forum, it has been argued that right to prefer appeal is a vested right and such right can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment. Said Act of 1985 having ousted the jurisdiction of the High Court in its entirety, has also by necessary intendment taken away right to prefer intra-court appeal as well.

13) Submission is also made to distinguish ratio of **T.K. Rangarajan** (supra).

14) For better understanding of the issue involved in this writ petition, this Court finds it apt to quote paragraphs 55, 90, 91, 92, 93, and 99 of **L. Chandra Kumar** (supra) hereinbelow:-

“55. Henry J. Abraham's definition of judicial review in the American context is, subject to a few modifications, equally applicable to the concept as it is understood in Indian Constitutional law. Broadly speaking, judicial review in India comprises three aspects: judicial review of legislative action, judicial review of judicial decisions and judicial review of administrative action. We are, for the present, concerned only with understanding the first two aspects.

90. We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in

respect of the power of judicial review, the jurisdiction of the High Courts under Articles 226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted. On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Articles 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.

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 the Tribunals under Article 227 of the Constitution. In R.K. Jain case, after taking note of these facts, it was suggested that the possibility of an appeal from the Tribunal 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 aforesaid contentions, we hold that all decisions of Tribunals, whether created pursuant to Article 323-A or Article 323-B 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.

92. We may add here that under the existing system, direct appeals have been provided from the decisions of all Tribunals to the Supreme Court under Article 136 of the Constitution. In view of our above-mentioned observations, this situation will also stand modified. In the view that we have taken, no appeal from the decision of a Tribunal will directly lie before the Supreme Court under Article 136 of the Constitution, but instead, the aggrieved party will be entitled to move the High Court under

Articles 226/227 of the Constitution and from the decision of the Division Bench of the High Court the aggrieved party could move this Court under Article 136 of the Constitution.

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 set-up, 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 High Court concerned 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 Tribunal concerned.

99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, 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 323-A and 323-B 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 a 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 323-A and Article 323-B 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 Tribunal concerned 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 Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

(emphasis supplied)

15) In **L. Chandra Kumar** (supra) Hon'ble Supreme Court saved the power of judicial review of High Courts under Article 226/227 of the Constitution. Such power of judicial review was discussed in paragraph 55 in consideration of Henry J. Abraham's definition of judicial review in American context and it was observed that subject to a few modifications such definition is equally applicable to the concept as it is understood in Indian Constitutional law. In paragraph 55 three facets of judicial review were taken into consideration; those are judicial review of legislative action, judicial review of judicial decisions and judicial review of administrative action. However, Hon'ble Supreme Court in **L. Chandra Kumar** (supra) confined its discussion and application thereto in connection with judicial review of legislative action and judicial review of judicial decisions excluding judicial review of administrative action. Judicial review of legislative action and judicial review of judicial decisions were discussed elaborately in paragraphs 90 and 91 respectively. Ultimately it was held that role of Tribunal is only supplementary and all decisions of Tribunals would be subject to scrutiny before a Division Bench of the respective High Courts. It was also observed therein that Tribunals would, however, continue to act as only Courts of first instance in respect of areas of law for which they were constituted. Furthermore, Hon'ble Supreme Court in **L. Chandra Kumar** (supra) emphasized the necessity for ensuring that the High Courts are able to exercise judicial superintendence over the decisions of the Tribunals under Article 227 of the Constitution.

16) In the present case since Tribunal is not functioning there is no decision of the Tribunal which can be examined by the Division Bench in exercise of its power of judicial review. Without any decision of the Tribunal if straightway petitioner approaches Division Bench for exercise of power of judicial review in that event petitioner would lose a forum. In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in **T.K. Rangarajan** (supra) wherein considering the situation where large number of employees were terminated at one hand and on the other hand there was one member in the Tribunal the Supreme Court found it necessary to permit the litigants to approach the High Court ensuring that justice should not be denied to affected persons.

17) In **Roger Mathew** (supra) Dr. D.Y Chandrachud, J. while supplementing and partly dissenting views of other Hon'ble Members of the Bench observed in paragraph 392 that in whichever State or Union Territory the Bench of a particular Tribunal is not established or functioning, the litigants of that State will have a right to invoke extraordinary writ jurisdiction of the jurisdictional High Court under Article 226 of the Constitution for redressal of their grievances.

18) It is pointed out by learned Advocate General that in terms of Section 28 of the said Act of 1985 jurisdiction of High Courts was not saved and in contradistinction thereto as per Section 8 of the said Act of 1997 jurisdiction of Division Bench of High Court to entertain writ petition under Article 226/227 was saved. Said Act of 1985 is relatable to Article 323-A and Act of 1997 is relatable to Article 323-

B. West Bengal Land Reforms and Tenancy Tribunal Act, 1997 was published in Calcutta Gazette Extraordinary on 12<sup>th</sup> December, 1997 and date of judgment of **L. Chandra Kumar** (supra) is 18<sup>th</sup> March, 1997. Therefore, Section 8 of said Act of 1997 conforms to dicta of **L. Chandra Kumar** (supra) with regard to saving jurisdiction of Division Bench of High Court under Article 226/227.

19) Notwithstanding right to prefer appeal as emanates from clause 15 of Letters Patent as urged by the learned Advocate General and said issue as found is yet to be taken into consideration by the Hon'ble Division Bench, Court finds in the present circumstances access to justice ought not to be denied when Tribunal is not functioning. Issue of preferring appeal under clause 15 of Letters Patent read with clause 44 may be taken into consideration in an appropriate situation by the Bench of higher strength and accordingly is kept open since it is pointed out by the learned Advocate General that on promulgation of said Act of 1985 by necessary implication right to prefer appeal against the decision of Single Bench is taken away. This Court is bound by the decisions of the Hon'ble Division Bench passed in **Arnab Adhikari** (supra) and **Runu Ghosh** (supra). Vide order dated 19<sup>th</sup> December, 2025 in **Arnab Adhikari** (supra) Hon'ble Division Bench directed the Registry to place the connected writ petition before the appropriate regular Bench (this Court) for consideration based on the observations made in paragraph 6 of said order. In **Runu Ghosh** (supra) another Division Bench vide order dated 12<sup>th</sup> June, 2025 taking note of the

ratio of **Rojer Mathew** (supra) observed that petitioner in that writ petition was required to approach the appropriate Single Bench. It was also held therein that application seeking judicial review before the Division Bench could not be entertained since there was no order of Tribunal which could be subject matter of judicial review.

20) In view of aforesaid discussions as Tribunal is not functioning, writ petition is found to be maintainable before this Court.

21) List the writ petition under the same heading for adjudication on merit on 21<sup>st</sup> January, 2026.

**(Saugata Bhattacharyya, J.)**