

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL)NO. 15804 OF 2017

ROJER MATHEW

...PETITIONER

VERSUS

SOUTH INDIAN BANK LIMITED AND ORS

...RESPONDENTS

O R D E R

1. Restructuring of Tribunal System in the light of constitutional scheme as interpreted in decisions of this Court and the Expert Studies is the issue for consideration. Concept of Tribunals was evolved to decongest the court system and to provide speedy and inexpensive justice. Separation of powers and independence of judiciary are the constitutional concepts which have to be followed in setting up of Tribunals. Functioning of Tribunals is required to be reviewed on the test of speedy and inexpensive quality justice.

2. In *R.K. Jain versus Union of India*¹, a Bench of this Court called for taking stock of the situation of working of Tribunals². It was observed that the

¹ (1993) 4 SCC 119

² Para8

personnel appointed to man the Tribunals discharge judicial/quasi judicial powers and thus, persons who adjudicate upon such powers must have legal expertise, judicial experience and legal training³. Independence of judiciary is a must for fair justice⁴. Institution of Tribunals being a substitute for courts could not be less effective than the courts to uphold faith of litigant public⁵. The Court expressed anguish over ineffectivity of alternative mechanism for judicial review. It was observed that dispensing of justice by Tribunals leaves much to be desired. Remedy of appeal to this Court was costly and prohibitive and people in far flung areas could ill afford to reach this Court. Members of the Bar should be recruited to man the Tribunals and working of Tribunals may need fresh look and regular monitoring⁶.

3. In *L. Chandra Kumar versus Union of India*⁷, a Bench of 7-Judges referred to the reports of Expert Committees and Commissions which dealt with the problem of arrears. 124th Report of the Law Commission (1988) analyzed the situation existing in High Courts and recommended specialized Tribunals. The Malimath Committee Report (1989-1990) noted that not all the Tribunals inspired confidence in public mind on account

3 Para 67
 4 Para 68
 5 Para 70
 6 Para 76
 7 (1997) 3 SCC 261

of lack of competence, objectivity and judicial approach. Constitution, power and method of appointment needed to be reviewed⁸. This Court noted that various Tribunals have not evolved up to the expectations which is self evident and widely acknowledged. Drastic measures were required to elevate the standards⁹. Exclusion of judicial review by High Courts and direct appeals to this Court was too costly and inaccessible and thus ineffective. The decisions of the Tribunals should be amenable to scrutiny before a Division Bench of the High Court¹⁰. Short tenure of members of Tribunal was not proper. Non judicial members must have judicial experience¹¹. There was need to review the competence of persons manning the Tribunals and oversight mechanism. Wholly independent agency was required for administration of all the Tribunals. A single umbrella organization could remove the ills of the present system¹².

4. In *Union of India versus R. Gandhi, President Madras Bar Association*¹³, the Constitution Bench observed that if Tribunals are to be given judicial power which was earlier exercised by courts, they must possess independence, security and capacity associated

⁸ (paras 8.63 to 8.66 as quoted in para 88 of L. Chandra Kumar)

⁹ Para 89

¹⁰ Para 92 to 94

¹¹ Para 95

¹² Para 96

¹³ (2010) 11 SCC 1

with courts. When the jurisdiction from courts is transferred to tribunals, members of judiciary should be the presiding officers/members such as Rent Tribunals, Motor Accident Claims Tribunals and Special Courts. Provision for technical members in addition to or substitution of judicial members would be a case of dilution of and encroachment upon independence of judiciary¹⁴. Technical members could be in addition to judicial members only when a specialized knowledge or expertise was a must. The legislature could constitute Tribunals but there is limitation of power on the legislature to prescribe qualifications and such limitation has to be read into the competence of the legislature to provide such qualifications¹⁵. Standards expected from judicial members and standards applied for appointment should be as nearly as possible same as applied to appointment of judges who are sought to be substituted¹⁶. Experience of administration may make a member of civil service a good administrator but not necessarily an able and impartial adjudicator¹⁷. There was gradual erosion of independence of judiciary and shrinking of the space occupied by the judiciary and increase in number of persons belonging to civil service discharging functions which were earlier

¹⁴ Para 90

¹⁵ Para 93

¹⁶ Para 108

¹⁷ Para 109

exercised by courts which was needed to be checked¹⁸.

5. In *Madras Bar Association versus Union of India (2014)*¹⁹, it was observed that the newly constituted Tribunals will be invalidly constituted unless its members are appointed in same manner and are entitled to same conditions of service as were available to the judges of the courts sought to be substituted²⁰. Constitution Bench of this Court observed that setting up of a Tribunal with seat at Delhi may deprive the litigants convenience of access to justice. Litigants may have to face hardship of travelling long distance and incur heavy expenses²¹. It should be inappropriate for the Central Government to have any administrative dealings with the persons or its members to uphold their independence and fairness.²² Appointment of non judicial members may constitute dilution and encroachment upon independence of judiciary and rule of law. The accountant members or technical members could not handle complicated questions of law. The judicial members are to handle substantial questions of law. Mere technical knowledge or knowledge of accounts was not enough²³. Manner of appointment of members of Tribunals should be by same procedure as appointment of

¹⁸ Para 112 and 120

¹⁹ (2014) 10 SCC 1

²⁰ Para 113.2

²¹ Para 122

²² Para 124

²³ Paras 126-127

judges who are substituted. Only a person possessing professional qualification of law with substantial experience in law may be able to handle such issues. Manning of Tribunals which are substitute for court of first instance was different from those who are not subservient to the High Courts²⁴. A party to the litigant should not participate in the selection process of members of the adjudicating body²⁵.

6. In *Madras Bar Association versus Union of India*(2015)²⁶ observations with regard to safeguarding dilution of standards in appointments of tribunals were reiterated²⁷.

7. In *Gujarat Urja Vikas Nigam Limited versus Essar Power Limited*²⁸, the observations in earlier judgments in *L. Chandra Kumar and Madras Bar Association* (supra) were reiterated to the effect that remedy of appeal to this Court was too costly and inaccessible. Further, overcrowding of docket of this Court obstructed key constitutional role of this Court. Composition of the appellate Tribunal dealing with questions of law being manned by non judicial members was not desirable which called for a review of composition of such Tribunals²⁹.

²⁴ Para 130

²⁵ Para 131

²⁶ (2015) 8 SCC 583

²⁷ Paras 27 and 28

²⁸ (2016) 9 SCC 103

²⁹ Paras 30-40

Accordingly, this Court framed certain questions to be examined by the Law Commission. The Law Commission has submitted its 272nd Report *inter alia* recommending restructuring of Tribunals so as not to provide direct appeal to this Court. It was also observed that the manner of appointment, eligibility, tenure and other privileges of persons manning Tribunals must be at par with the persons manning courts sought to be substituted. The selection procedure must ensure independence of judiciary. All Tribunals should be placed under a single umbrella for proper monitoring.

8. 74th Report of the Parliamentary Standing Committee considered a draft Bill for Uniform Service Conditions of members of the Tribunals.

9. In the above background, when the present matter came up for hearing on 24th October, 2017 it was pointed out that appointment, norms and functioning of Debt Recovery Tribunals was not consistent with the observations of this Court in various judgments. Accordingly, the court requested Shri Arvind P. Datar learned senior counsel to assist the court as amicus. On 6th December, 2017, the Court had an interaction with the Attorney General on the issue of restructuring of Tribunals specially creation of a regular cadre to man the Tribunals.

10. On 15th March, 2018, learned amicus gave a Concept Note. It was also submitted that short term

appointments out of retired persons was not conducive to the justice delivery by the Tribunals. The Tribunals must be manned by a regular cadre. Selection should be by a national competition by an expert autonomous body. Oversight mechanism must be vested with an autonomous body. There should be no statutory appeal directly to this Court as it hampered access to justice, litigation in this Court being costly and difficult for a litigant located at far off places.

11. Accordingly, this Court recorded that revisit of the structure of tribunals was necessary to uphold the rule of law and independence of judiciary. The Central Government was directed to file its response. 12.

Again on 4th April, 2018, following further issues were noted :

"i) How to remedy the handicap in access to justice when a Tribunal has only one seat for its working to the exclusion of jurisdiction of all other courts in the country as noted in Gujarat Urja Vikas Nigam Limited versus Essar Power Limited, (2016) 9 SCC 103 para 34. In such cases, question is whether jurisdiction of the Tribunal can be conferred on a specified court nominated by the High Court in each of the State or, where work of such nature may be insignificant in some States, on one officer in more than one States.

ii) Whether 'Access to Justice Facilitation Centres' (AJFCs), with or without private participation, can be set up at convenient locations in the country from where a party can access a Court or Tribunal located at long distance with or without payment of such specified charges. Such centres may also have facilities for e-filing and such other services as may facilitate a party for participation in

proceedings. This may enhance access to justice and obviate need for travelling long distances, particularly if such parties are in remote areas.

iii) Whether in absence of availability of suitable persons of statutorily prescribed qualifications to man Tribunals/Commissions, pending filling up of vacancies, such Tribunals/Commissions can be manned by existing courts in consultation with the High Courts. Needless to say that servicing officers are duly selected and accountable in the matter of performance and discipline.

iv) Whether power of Commissions/Tribunals having overlapping jurisdiction such as Human Rights Commissions, having only one seat in a State, can be conferred on specified courts in one or more districts, in addition to or in substitution of such Commission, so as to make access to justice available at the grass root."

13. Accordingly, an affidavit has been filed by the Union of India. The affidavit *inter alia* refers to Finance Act, 2017 dealing with the appointment procedure for the Tribunals and a petition challenging the same in this Court. It is submitted that the matter being *sub judice* this was not a stage to revisit the issue of manning of Tribunals.

14. The affidavit does not deal with working of all the Tribunals and is confined to the Debt Recovery Tribunals. It is presumed that system of Debt Recovery Tribunal was far more efficient than the system of courts. It is stated that as on 30.09.1990 more than 15 lakh bank cases were pending in courts but as on 31.03.2017 only 78,961 cases were pending before 39 Debt Recovery Tribunals. It is however concluded that

Union of India was not averse to revisit the issue of access to justice.

15. Learned amicus pointed out that the affidavit of Union of India does not deal with the issues raised in these proceedings. The assumption in the affidavit in comparing the working of courts and Tribunals was not based on entire relevant data. Reference to 15 lakh cases appears to be reference to all the cases, while reference to pendency before Tribunals is only in cases involving more than 10 lakhs. Moreover, the data of yearly institution and disposal has not been furnished to compare the rate of disposal. Longest period of pendency before different Tribunals is also not indicated.

16. Learned amicus referred to the concept note to the effect that there was need for an independent oversight body in the light of observations in *L. Chandra Kumar* (supra) which have been reiterated in NCLT case (*Madras Bar Association*) (2015) (supra) to the effect that the Tribunals or their members should not be required to seek facilities from the sponsoring or parent ministries or concerned departments. 74th Report of the Parliamentary Standing Committee also recommended creation of a National Tribunal Commission to oversee all the Tribunals in the country. Accordingly, it has been suggested that an independent body called National Tribunal Commission (NTC) should

be constituted as follows :

A. Two retired Supreme Court Judges (with the senior-most amongst them to be Chairman)

B. Two retired High Court Judges (Members)

C. Three members representing the Executive.

The appointment of members of the NTC should be by

following Selection Committee :

Chief Justice of India (as Chairperson of the Committee who exercises a casting vote);

Two senior most judges of the Supreme Court after the Chief Justice of India;

Current Law Minister; and

Leader of the Opposition.

17. The NTC should oversee functioning of central Tribunals and similar body may be constituted for State tribunals. The NTC should deal with appointment and removal of members of the Tribunals by constituting sub committees. The concept note also deals with further details on the subject. Further suggestion is that the member of the Tribunals should be recruited by national competition. Once recruited they should continue till the age of 62/65 years subject to their efficiency and satisfactory working. The Tribunals should not be heaven for retired persons and appointment process should not result in decisions being influenced if the Government itself is a litigant and the appointing authority at the same time. There should be restriction on acceptance of any employment after retirement. There is also suggestion that bypassing of High Court jurisdiction under Article 226/227 needs to be remedied by statutory amendment excluding direct

appeals to this Court. There should be proper mechanism for removal of members.

18. We broadly approve the concept of having an effective and autonomous oversight body for all the Tribunals with such exceptions as may be inevitable. Such body should be responsible for recruitments and oversight of functioning of members of the Tribunals. Regular cadre for Tribunals may be necessary. Learned amicus suggests setting up of all India Tribunal service on the pattern of U.K. The members can be drawn either from the serving officers in Higher Judicial Service or directly recruited with appropriate qualifications by national competition. Their performance and functioning must be reviewed by an independent body in the same was as superintendence by the High Court under Article 235 of the Constitution. Direct appeals must be checked. Members of the Tribunals should not only be eligible for appointment to the High Courts but a mechanism should be considered whereby due consideration is given to them on the same pattern on which it is given to the members of Higher Judicial Service. This may help the High Courts to have requisite talent to deal with issues which arise from decisions of Tribunals. A regular cadre for the Tribunals can be on the pattern of cadres for the judiciary. The objective of setting up of Tribunals to have speedy and inexpensive justice will not in any

manner be hampered in doing so. Wherever there is only one seat of the Tribunal, its Benches should be available either in all states or at least in all regions wherever there is litigation instead of only one place.

19. To sum up, the issues requiring consideration may be as under :

- (i) Creation of a regular cadres laying down eligibility for recruitment for Tribunals;
- (ii) Setting up of an autonomous oversight body for recruitment and overseeing the performance and discipline of the members so recruited and other issues relating thereto;
- (iii) Amending the scheme of direct appeals to this Court so that the orders of Tribunals are subject to jurisdiction of the High Courts;
- (iv) Making Benches of Tribunals accessible to common man at convenient locations instead of having only one location at Delhi or elsewhere. In the alternative, conferring jurisdiction on existing courts as special Courts or Tribunals.

20. The above issues may require urgent setting up of a committee, preferably of three members, one of whom must be retired judge of this Court who may be served in a Tribunal. Such Committee can have interaction with all stakeholders and suggest a mechanism consistent with the constitutional scheme as interpreted by this Court in several decisions referred to above and also in the light of recommendations of expert bodies. This exercise must be undertaken in a time bound manner

To consider the matter for further, list on

Thursday i.e. 10th May, 2018 as prayed by learned
Attorney General.

.....J.
[ADARSH KUMAR GOEL]

.....J.
[INDU MALHOTRA]

**NEW DELHI;
MAY 07, 2018.**