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REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 1018 OF 2021

MADRAS BAR ASSOCIATION ...PETITIONER

VERSUS

UNION OF INDIA AND ANOTHER ...RESPONDENTS

WITH

WRIT PETITION (C) NO. 626 OF 2021

INDEX

I. INTRODUCTION 2
II. THE CHALLENGE 5
III. SUBMISSIONS 11
IV. THE TRIBUNALS JURISPRUDENCE 16
(i) S.P. Sampath Kumar v. Union of India and Others 17
(ii) R.K. Jain v. Union of India 21
(iii) L. Chandra Kumar v. Union of India and Others 22
(iv) Union of India v. R. Gandhi, President, Madras Bar Association 25
(v) Madras Bar Association v. Union of India and Another ... 35
(vi) Madras Bar Association v. Union of India and Another ... 39
(vii) Rojer Mathew v. South Indian Bank Limited represented by its Chief Manager and Others 42
(viii) Madras Bar Association v. Union of India and Another ... 48
(ix) Madras Bar Association v. Union of India and Another ... 68
V. ATTORNEY GENERAL'S PLEA TO REFER THE ISSUE TO A LARGER BENCH 94
VI. ANALYSIS OF THE SUBMISSIONS 96
VII. THE VALIDITY OF THE IMPUGNED ACT 116
VIII. PROTECTION EXTENDED 129
IX. CONCLUSION 132

J U D G M E N T

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I. INTRODUCTION

"… the provisions of the Constitution are binding upon the different organs of the State. Consequently, it is to be presumed that those who work the Constitution, those who compose the Legislature and those who compose the executive and the judiciary know their functions, their limitations and their duties. It is therefore to be expected that if the executive is honest in working the Constitution, then the executive is bound to obey the Legislature without any kind of compulsory obligation laid down in the Constitution.

Similarly, if the executive is honest in working the Constitution, it must act in accordance with the judicial decisions given by the Supreme Court. Therefore my submission is that this is a matter of one organ of the State acting within its own limitations and obeying the supremacy of the other organs of the State. In so far as the Constitution gives a

supremacy to that is a matter of constitutional obligation which is implicit in the Constitution itself…

No constitutional Government can function in any country unless any particular constitutional authority remembers the fact that its authority is limited by the Constitution and that if there is any authority created by the Constitution which has to decide between that particular authority and any other authority, then the decision of that authority shall be binding upon any other organ."

— Dr. B.R. Ambedkar in the Constituent Assembly on 14th October 1949

1. These observations of Dr. B.R. Ambedkar aptly encapsulate the foundational principles that must inform the adjudication of the case at hand. The issues that arise go to the heart of that constitutional design. They involve questions concerning the scope and limits of judicial review, the contours of the doctrine of separation of powers, the manner in which legislative power is exercised by Parliament, and the corresponding bounds of executive authority under the

Constitution. At their core lies the principle of the rule of law, which mandates that all institutions derive their legitimacy from, and remain accountable to, the Constitution. Above all, this case deals with the delicate constitutional balance among the three organs of governance, as envisioned by the framers of the Constitution.

2. Our Constitution mandates the supremacy of the Constitution. The underlying principles embodied in it guide not only the judiciary, but also the legislature and the executive. While the function of the judiciary is to interpret, protect, and expand these foundational principles, the legislature and the executive are entrusted with the duty to give effect to them through law and governance. In their distinct spheres of action, each organ of the State remains bound by a common constitutional obligation: respect for and adherence to the supremacy of the Constitution. It is this shared responsibility that ensures the unity of purpose within the framework of the separation of powers.

3. The present case must therefore be examined against this broader constitutional backdrop, where the mutual respect and defined boundaries among the three organs of the

State are tested in matters that directly concern the balance between legislative policy and judicial independence. The validity of the *Tribunals Reforms Act, 2021*[1] has been challenged. However, this challenge cannot be viewed in isolation, as we shall highlight in subsequent discussion. It forms part of a continuing constitutional dialogue on the structure, independence, and functioning of tribunals.

II. THE CHALLENGE

4. The lead petition in this batch *inter-alia* challenges the *vires* of the Impugned Act. Let us look at the provisions of the Impugned Act. Section 3 empowers the Central Government to frame rules on the qualifications, appointments, salaries, allowances, and service conditions of the Chairperson and Members of Tribunals, notwithstanding anything in prior judgments or existing laws. These rules account for the required experience, relevant specialisation, and the scheme of the said Act. No person below fifty years of age is eligible for appointment. Appointments are to be made by the Central

[1] **Hereinafter, "Impugned Act".**

Government on the recommendation of a Search-cum-Selection Committee[2].

5. For all Tribunals other than State Administrative Tribunals, the SCSC is chaired by the Chief Justice of India or a Supreme Court Judge nominated by him, and includes two Secretaries to the Government of India, and one additional Member, who may be the outgoing or sitting Chairperson of the Tribunal. In case the sitting Chairperson seeks re-appointment, a retired Supreme Court Judge or retired Chief Justice of a High Court nominated by the CJI would be a member. In certain Tribunals such as Industrial Tribunals, Debt Recovery Tribunals, and others notified by the Central Government, this additional member must always be a retired Supreme Court Judge or retired Chief Justice of a High Court. The Secretary of the concerned Ministry or Department acts as the Member-Secretary of the Committee, without voting rights. For State Administrative Tribunals, the SCSC comprises the Chief Justice of the High Court (Chairman), the State Chief Secretary, the Chairman of the State Public Service Commission, and one additional member, subject to similar

[2] **Hereinafter, "SCSC".**

conditions, along with the Secretary/Principal Secretary of the State General Administration Department as Member-Secretary. The Chairperson of every SCSC has a casting vote. The Committee is free to determine its own procedure, and it must recommend a panel of two names for every vacancy, upon which the Central Government is expected to act preferably within three months. Any vacancy or absence within the Committee does not invalidate the appointments.

6. Section 4 of the Impugned Act provides that the Central Government may remove a Chairperson or Member of a Tribunal on the recommendation of the prescribed Committee and in the manner laid down by rules. Removal may be ordered if the individual (a) has been declared insolvent, (b) has been convicted of an offence involving moral turpitude, (c) has become physically or mentally incapable of performing the duties of the office, (d) has acquired financial or other interests that are likely to adversely affect the discharge of functions, or (e) has abused the position in a manner prejudicial to the public interest. However, when removal is proposed on the grounds of incapacity, conflict of interest, or abuse of position, covered under clauses (c) to (e),

the concerned Chairperson or Member must be informed of the charges and given an opportunity to be heard.

7. Section 5 of the Impugned Act stipulates that, despite anything contained in earlier judgments or existing laws, the Chairperson of a Tribunal shall serve for a tenure of four years or until attaining the age of seventy years, whichever occurs earlier. Similarly, a Member of a Tribunal shall hold office for a period of four years or until reaching the age of sixty-seven years, whichever is earlier. The provision includes a transitional safeguard: if a Chairperson or Member was appointed between 26 May 2017 and the notified date, and the appointment order issued by the Central Government grants a longer tenure or higher age of retirement than what is prescribed in this section, then the terms in the original appointment order will prevail, subject to an upper limit of five years as the maximum permissible tenure.

8. Section 6 of the Impugned Act provides that the Chairperson and Members of a Tribunal may be considered for re-appointment in accordance with the provisions of the said Act. When evaluating candidates for re-appointment, due preference must be given to the service already rendered by

the individual. All re-appointments are required to follow the same procedure prescribed for initial appointments under Section 3(2) of the said Act, meaning they must be made on the recommendation of the SCSC.

9. Section 7 of the Impugned Act empowers the Central Government, notwithstanding any prior judgments or existing laws, to frame rules prescribing the salary of the Chairperson and Members of a Tribunal. They are entitled to receive allowances and benefits equivalent to those admissible to a Central Government officer holding an equivalent pay level. The provision also allows a higher reimbursement of house rent, beyond the standard house rent allowance, if the Chairperson or Member resides in rented accommodation, subject to limits and conditions specified by rules. Further, once appointed, neither the salary and allowances nor any other terms and conditions of service of the Chairperson or Member may be altered to their disadvantage.

10. The Impugned Act also amends multiple statutes, including the Industrial Disputes Act, Cinematograph Act, Copyright Act, Income-tax Act, Customs Act, Patents Act, SAFEMA, Administrative Tribunals Act, Railway Claims

Tribunal Act, SEBI Act, Recovery of Debts and Bankruptcy Act, Airports Authority of India Act, TRAI Act, Trade Marks Act, National Green Tribunal Act, Companies Act, and Consumer Protection Act. In these Acts, references to earlier tribunal provisions under the *Finance Act, 2017* are replaced with references to the Impugned Act. Several specialised Tribunals or Appellate Boards are abolished, and their functions are shifted either to High Courts, Commercial Courts, or designated authorities.

11. Many sections establishing or regulating Appellate Boards, Tribunals, or appellate mechanisms are omitted, and related procedural provisions are updated. Sections 183 and 184 of the *Finance Act, 2017*, along with the Eighth Schedule, are deleted. For bodies like the National Consumer Disputes Redressal Commission, the qualifications, appointments, tenure, salaries, and removal of members appointed after the Impugned Act are now governed entirely by the Impugned Act.

12. Section 33 of the Impugned Act provides that, despite anything contained in existing laws, all persons serving as Chairpersons, Presidents, Presiding Officers, Vice-Chairpersons, Vice-Presidents, or Members of the Tribunals,

Appellate Tribunals, and other authorities listed in the Second Schedule shall cease to hold office from the notified date. They are entitled to compensation of up to three months' pay and allowances for the premature termination of their tenure or contractual service. Officers and employees serving on deputation in these bodies will automatically revert to their parent cadre, ministry, or department on the notified date. All pending appeals, applications, and proceedings, except those before the Authority for Advance Rulings under the Income-tax Act, will stand transferred to the court in which they would originally have been filed had the Impugned Act been in force at the time, and the court may continue the matter from the existing stage or any earlier stage, or even conduct a de novo hearing.

13. The *vires* of these provisions have been challenged on various grounds.

III. SUBMISSIONS

14. We have extensively heard Shri Arvind P. Datar and Shri C.S. Vaidyanathan, learned Senior Counsel appearing for the Petitioners and Shri Sidharth Luthra, Shri P. S. Patwalia, Shri Sanjay Jain, Shri Porus F. Kaka, Shri Gopal

Sankaranarayanan, Shri Balbir Singh, Shri Gagan Gupta, Shri Puneet Mittal, Shri Sachit Jolly and Shri B.M. Chatterji, learned Senior Counsel and Shri Ninad Laud, learned counsel appearing for the Applicant(s). We have also extensively heard Shri R. Venkataramani, learned Attorney General for India, and Ms. Aishwarya Bhati, learned Additional Solicitor General, appearing for the Respondent-Union of India.

15. The gist of the arguments advanced by the learned Senior Counsel/counsel appearing for the Petitioners/Applicants is that:

(i) Several provisions of the Impugned Act, particularly Sections 3(1), 3(7), 5, and 7(1), violate the constitutional principles of separation of powers and judicial independence. By diluting the judiciary's role in appointments, tenure, and service conditions of tribunal members, these provisions infringe the basic structure and contravene Articles 14, 21 and 50 of the Constitution, as well as binding decisions of the Court.

(ii) The Impugned Act amounts to an impermissible legislative overruling of judicial directions,

particularly by enabling the executive, through delegated rule-making powers, to undo safeguards prescribed by the Court. The delegation of authority to the executive to frame rules regarding appointments, allowances, and conditions of service is excessive and encroaches upon core judicial functions.

(iii) The Impugned Act also nullifies judicially framed rules by reintroducing provisions previously struck down, such as the minimum age requirement, a truncated four-year tenure, and the process of recommending multiple names, thereby frustrating the Court's directions. These provisions violate the legitimate expectations and vested rights of sitting members regarding tenure, reappointment, allowances, and house rent allowances.

(iv) The Impugned Act imposes arbitrary age and tenure restrictions that discourage meritorious candidates below fifty years from joining tribunals. Section 3(7) of the said Act limits judicial oversight by requiring the SCSC to forward two names per vacancy and

directing the government to act "preferably within three months." The executive's control over allowances and house rent entitlement compromises judicial independence, while the continued failure to establish an independent National Tribunals Commission leaves tribunals under executive control, particularly within the Ministry of Finance.

16. The gist of the arguments advanced by the learned Attorney General for India appearing for the Respondents:

(i) On behalf of the Union of India, the primary contention is that courts cannot compel the legislature to enact a particular law or structure a statutory framework in a specific manner. Law-making is a domain reserved for the legislature, and judicial review cannot be used to prescribe the contents of legislation or to mandate how qualifications, age limits, or tenures should be framed.

(ii) The Union further argues that the power of the courts to issue mandamus arises only when there

is a clear public duty imposed by law. If the statute does not create an obligation to frame rules or make appointments in a particular form or within a fixed timeline, courts cannot direct the executive to do so. Similarly, non-compliance with judicial directions that intrude into the policy-making space of the legislature cannot attract contempt, because the authority to frame rules is vested in the executive and Parliament.

(iii) The Parliament is fully competent to redefine qualifications, eligibility, or selection processes for tribunals. These matters fall squarely within legislative policy, and courts are not expected to sit in judgment over the wisdom of these choices. Even if judicial guidelines were earlier issued regarding tribunal appointments or service conditions, Parliament can modify the underlying legal framework through a valid law, and doing so would not amount to overriding judicial authority but merely exercising its constitutional role. The independence of the judiciary is also stated to be

unaffected where the tenure or service conditions of tribunal members are prescribed by statute, since tribunals are creatures of legislation. It has been added that prescribing age limits or tenures does not, by itself, compromise judicial independence.

(iv) A statute can only be invalidated for lack of legislative competence or violation of constitutional provisions. It cannot be struck down for not conforming to directions previously issued by the judiciary or because courts consider an alternative structure preferable. Ultimately, the Union seeks to assert that the Impugned Act represents a legislative policy choice. Parliament's decisions on qualifications, age criteria, tenure, and administrative arrangements for tribunals, therefore, deserve deference unless they breach explicit constitutional mandates.

IV. THE TRIBUNALS JURISPRUDENCE

17. To give a full picture of the present case, it is necessary to trace the historical trajectory to understand how the

developments leading up to the Impugned Act have shaped the current dispute before the Court.

18. To ensure specialised, efficient adjudication and speedy resolution of specific categories of cases, India introduced the system of tribunals. Part XIV-A was incorporated into the Constitution through the Forty-Second Amendment Act, 1976. Under Article 323-A, Parliament is empowered to establish administrative tribunals for service-related matters, while Article 323-B enables the appropriate legislature to constitute tribunals for other enumerated subjects.

(i) S.P. Sampath Kumar v. Union of India and Others

19. In pursuance of Article 323-A, Parliament enacted the *Administrative Tribunals Act, 1985*, providing for the establishment of administrative tribunals to adjudicate service disputes of public servants. The constitutional validity of this enactment came under challenge before a Constitution bench in ***S.P. Sampath Kumar v. Union of India and Others***[3] where the Court was called upon to consider two principal

[3] **(1987) 1 SCC 124**

issues: *first*, whether the exclusion of the jurisdiction of the High Courts under Articles 226 and 227 in service matters was constitutionally permissible, and *second*, whether the composition of the tribunals and the method of appointment of the Chairman, Vice-Chairman, and Members conformed to the requirements of the Constitution.

20. Writing for the Court, Justice Ranganath Misra (as his Lordship then was) held that "the Tribunal should be a real substitute of the High Court-not only in form and *de jure* but in content and *de facto*". It opined that the Chairman of the Tribunal "office should for all practical purposes be equated with the office of Chief Justice of a High Court", and that a retiring or retired Chief Justice of a High Court or when such a person is not available, a Senior Judge of proved ability either in office or retired should be appointed. The reason was that judicial discipline generated by experience and training in an adequate dose in a judicial office is a necessary qualification for the post of Chairman.

21. Regarding the selection of Vice-Chairman and members, the Court held that such selection when it is not of a sitting Judge or retired Judge of a High Court should be done

by a high-powered committee with a sitting Judge of the Supreme Court to be nominated by the Chief Justice of India as its Chairman. This will ensure selection of proper and competent people to man these high offices of trust and help to build up reputation and acceptability.

22. It was further observed that prescribing a tenure of only five years for the Chairman, Vice-Chairman, and Members of the Tribunal could act as a deterrent to attracting competent candidates, particularly from younger age groups who would retire long before the usual age of superannuation. Since appointees were required to resign from their previous posts, a short tenure offered little security or continuity. The Court noted that such a limited term was neither convenient for the appointees nor conducive to the effective functioning of the tribunal system, as members would often leave just as they had gained adequate expertise in service jurisprudence.

23. The Union government was directed to make changes in the Act in line with the judgment. In his concurring opinion, Chief Justice P.N. Bhagwati observed that the position of Chairperson should not be held by an individual who has merely served as a Secretary to the Government of India, since

such a role does not necessarily involve the development of a judicial temperament. As regards the appointment of Vice-Chairpersons and Members, he emphasized that District Judges and advocates qualified to be appointed as Judges of the High Court should also be considered eligible for selection.

24. In a review petition filed in the case,[4] the Court clarified that appointments to the Central Administrative Tribunal should be made through a High-Powered Selection Committee headed by a sitting Judge of the Supreme Court nominated by the Chief Justice of India. For State Administrative Tribunals, a similar committee should be chaired by a sitting Judge of the concerned High Court nominated by its Chief Justice. Rejecting the Attorney General's contention that advocates lacked administrative experience to serve as Vice-Chairpersons, the Court held that an advocate qualified to be a High Court Judge is inherently competent to discharge both judicial and administrative functions.

25. Insofar as the exclusion of the power of judicial review exercised by the High Court in service matters under

[4] S.P. Sampath Kumar and Others v. Union of India and Others (1987) Supp SCC 734

Articles 226 and 227 of the Constitution by virtue of Section 28 of the *Administrative Tribunals Act, 1985* is concerned, the Constitution Bench held that the exclusion of judicial review was not whole inasmuch as the jurisdiction of this Court under Articles 32 and 136 of the Constitution had been kept intact. Though it was held that the power of judicial review is a basic and essential feature of the Constitution but if any constitutional amendment made by the Parliament takes away from the High Court the power of judicial review, in any particular area, and vests it in any other institutional mechanism, it would not be violative of the basic structure doctrine.

(ii) R.K. Jain v. Union of India

26. In ***R.K. Jain v. Union of India***[5] a three-judge bench dealt with a complaint concerning the functioning of the Customs, Excise and Gold Control Appellate Tribunal, which was set up by exercising the power conferred by Article 323-B. In his leading opinion, Justice K. Ramaswamy observed that tribunals established under Articles 323-A and 323-B of the Constitution, or under any statute, are creations

[5] **(1993) 4 SCC 119**

of the legislature and cannot claim the same status, parity, or substitution as High Courts or their Judges. Nevertheless, it was reiterated that the individuals appointed to such tribunals exercise judicial or quasi-judicial functions and must, therefore, possess a judicial approach along with adequate knowledge and expertise in relevant branches of constitutional, administrative, and tax law.

(iii) L. Chandra Kumar v. Union of India and Others

27. Subsequently, the judgment in ***S.P. Sampath Kumar*** *(supra)* was reconsidered by a seven-judge bench in ***L. Chandra Kumar v. Union of India and Others***[6]. The Court held that the High Courts' power of judicial superintendence over all courts and tribunals within their jurisdiction forms part of the basic structure of the Constitution. While tribunals cannot exercise judicial review of legislative action to the exclusion of the High Courts or the Supreme Court, they may perform a supplementary, though not a substitutive, role in this regard. The Court declared Article 323A(2)(d) and Article 323B(3)(d) unconstitutional insofar as they exclude the jurisdiction of the High Courts

[6] **(1997) 3 SCC 261**

under Articles 226/227 and the Supreme Court under Article 32, holding that all tribunal decisions remain subject to the writ jurisdiction of the Division Bench of the concerned High Court. It was observed that:

> "**99.** …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…"

28. The Court also examined the qualifications and competence of the individuals appointed to the tribunals, as well as the question of which authority should exercise administrative supervision over them. It was held:

> "**95.** …It must be remembered that the setting-up of these Tribunals is founded on the premise that specialist bodies comprising both trained administrators and those with judicial experience would, by virtue of their specialised knowledge, be better equipped to dispense speedy and efficient justice. It was expected that a judicious mix of judicial members and those with grass-roots experience would best serve this purpose. To hold that the Tribunal should consist only of judicial members would attack the primary basis of the theory pursuant to which they have been constituted. Since the Selection Committee is now headed by a Judge of the Supreme Court, nominated by the Chief Justice of India, we have reason to

believe that the Committee would take care to ensure that administrative members are chosen from amongst those who have some background to deal with such cases."

29. Emphasizing the need for efficient running of these tribunals, the Court suggested:

"**96.** It has been brought to our notice that one reason why these Tribunals have been functioning inefficiently is because there is no authority charged with supervising and fulfilling their administrative requirements.... The creation of a single umbrella organisation will, in our view, remove many of the ills of the present system. If the need arises, there can be separate umbrella organisations at the Central and the State levels. Such a supervisory authority must try to ensure that the independence of the members of all such Tribunals is maintained. To that extent, the procedure for the selection of the members of the Tribunals, the manner in which funds are allocated for the functioning of the Tribunals and all other consequential details will have to be clearly spelt out."

97. The suggestions that we have made in respect of appointments to Tribunals and the supervision of their administrative function need to be considered in detail by those entrusted with the duty of formulating the policy in this respect. That body will also have to take into consideration the comments of experts bodies like the LCI [Law Commission of India] and the Malimath Committee in this regard. We, therefore, recommend that the Union of India initiate action in this behalf and after consulting all concerned, place all these Tribunals under one single nodal department, preferably the Legal Department."

30. In other words, the Court stated that an independent nodal body would help secure institutional autonomy and safeguard the independence of tribunals.

(iv) Union of India v. R. Gandhi, President, Madras Bar Association

31. Independence of tribunals was then emphasized by a Constitution Bench in ***Union of India v. R. Gandhi, President, Madras Bar Association***[7] (hereinafter **"MBA (I)"**). The President of the Madras Bar Association challenged before the High Court the constitutional validity of an amendment to the *Companies Act, 1956*, that established the National Company Law Tribunal[8] and the National Company Law Appellate Tribunal[9]. It was argued that the constitution of the NCLT and the transfer of the entire company jurisdiction of the High Court to the Tribunal, which is not under the control of the Judiciary, are violative of the doctrine of separation of powers and the independence of the Judiciary, which are part of the basic structure of the Constitution. The High Court found several provisions to be defective and violative of the

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[7] **(2010) 11 SCC 1**
[8] **Hereinafter, "NCLT".**
[9] **Hereinafter, "NCLAT".**

constitutional principles of separation of powers and judicial independence. It held that, unless these defects were rectified, the constitution of the NCLT and NCLAT would be unconstitutional. The Union Government agreed to amend the law, including fixing a five-year tenure for the Chairperson, President, and Members, restricting the post of President to a serving or retired High Court Judge, and dropping the provision for Member (Administration).

32. In appeal in relation to other provisions, this Court emphasized the lack of independence of tribunals:

> "**64.** Only if continued judicial independence is assured, Tribunals can discharge judicial functions. In order to make such independence a reality, it is fundamental that the members of the Tribunal shall be independent persons, not civil servants. They should resemble courts and not bureaucratic Boards. Even the dependence of Tribunals on the sponsoring or parent department for infrastructural facilities or personnel may undermine the independence of the tribunal (vide Wade & Forsyth: Administrative Law, 10th Edn., pp. 774 and 777).
>
> …
>
> **70.** …unfortunately tribunals have not achieved full independence. The Secretary of the 'sponsoring department' concerned sits in the Selection Committee for appointment. When the Tribunals are formed, they are mostly dependant on their sponsoring department for funding, infrastructure and even space for functioning. The statutes constituting Tribunals routinely provide for members of civil services from the sponsoring departments

> becoming members of the Tribunal and continuing their lien with their parent cadre. Unless wide ranging reforms as were implemented in United Kingdom and as were suggested by *L. Chandra Kumar* (1997) 3 SCC 261 are brought about, Tribunals in India will not be considered as independent."

33. **MBA (I)** thus underscored that without comprehensive reform, ensuring structural independence in appointments, funding, and administration, Indian tribunals will remain quasi-executive rather than quasi-judicial bodies. The Court gave a warning that, unless tribunals are institutionally independent, they cannot truly fulfil their constitutional purpose.

34. On the issue of whether the inclusion of a Technical Member alongside a Judicial Member affects the validity of the provisions establishing Tribunals, the Court observed:

> "**90.** But when we say that Legislature has the competence to make laws, providing which disputes will be decided by courts, and which disputes will be decided by Tribunals, it is subject to constitutional limitations, without encroaching upon the independence of judiciary and keeping in view the principles of Rule of Law and separation of powers. If Tribunals are to be vested with judicial power hitherto vested in or exercised by courts, such Tribunals should possess the independence, security and capacity associated with courts. If the Tribunals are intended to serve an area which requires

> specialized knowledge or expertise, no doubt there can be Technical Members in addition to Judicial Members. Where however jurisdiction to try certain category of cases are transferred from Courts to Tribunals only to expedite the hearing and disposal or relieve from the rigours of the Evidence Act and procedural laws, there is obviously no need to have any non-judicial Technical Member. In respect of such Tribunals, only members of the Judiciary should be the Presiding Officers/members. Typical examples of such special Tribunals are Rent Tribunals, Motor Accident Claims Tribunals and Special Courts under several Enactments. Therefore, when transferring the jurisdiction exercised by Courts to Tribunals, which does not involve any specialized knowledge or expertise in any field and expediting the disposal and relaxing the procedure is the only object, a provision for technical members in addition to or in substitution of judicial members would clearly be a case of dilution of and encroachment upon the independence of the Judiciary and Rule of Law and would be unconstitutional."

35. Thus, inclusion of technical members is justified only when specialized expertise is essential.

36. The Court held that while the Legislature may establish tribunals and set eligibility criteria for their members, such provisions are subject to judicial review to ensure that members are qualified to discharge judicial functions and uphold public confidence. It emphasized that independent and impartial adjudication of citizens' disputes, free from executive control, is an essential facet of the Rule of Law and a core

element of judicial independence under the Constitution. The Court reiterated that when judicial functions are transferred from courts to tribunals, such bodies must be proper judicial tribunals, comprising members of comparable rank, status, and independence as judges of the courts they replace, with similar security of tenure. Technical members should be appointed only where specialized expertise is essential. Indiscriminate appointment of such members undermines judicial independence. While the legislature may determine the structure and qualifications for tribunals, these provisions remain subject to judicial review to ensure they do not erode judicial standards or the separation of powers.

37. The Court also held that though "the validity of the provisions of a legislative act cannot be challenged on the ground it violates the basic structure of the constitution, it can be challenged as violative of constitutional provisions which enshrine the principles of Rule of Law, separation of power and independence of Judiciary." Applying this principle, the Court held that "if a Tribunal is packed with members who are drawn from the civil services and who continue to be employees of different Ministries or Government Departments by

maintaining lien over their respective posts, it would amount to transferring judicial functions to the executive which would go against the doctrine of separation of power and independence of judiciary."

38. The Court further observed that the Legislature, presumed to act in accordance with the rule of law, must ensure that when it substitutes tribunals for courts, their standards match those of the regular judiciary. The rule of law demands an independent and impartial judiciary, manned by persons of competence, ability, and impeccable character. Therefore, when tribunals take over the functions of High Courts, their judicial members must possess qualifications and integrity comparable to High Court judges, including a strong legal background, independent outlook, and good reputation. Technical members, on the other hand, must be persons of recognized standing with specialized expertise in the tribunal's subject area. The Court cautioned that only long administrative experience cannot substitute for judicial temperament, which requires fairness, reasoned decision-making, and visible impartiality.

39. The Court held that Technical Members must be of at least Secretary or Additional Secretary rank with proven competence and integrity, otherwise lowering eligibility standards would erode public confidence in tribunals. It was further held that while civil service officers may appropriately serve as Technical Members in Administrative Tribunals due to their knowledge of government functioning, this does not qualify them for tribunals requiring specialized technical expertise, such as Company Law Tribunals. Tribunals should not become posts of convenience for civil servants lacking domain knowledge. The Court emphasized that only experts relevant to the tribunal's field, such as engineers in technical tribunals or military officers in armed forces tribunals, should serve as Technical Members.

40. The Court also noted that allowing tribunal members to retain their lien with their parent ministries undermines judicial independence, as such members would continue to think and act as civil servants. While not questioning the integrity of officers, the Court stressed that public perception of independence, impartiality, and fairness of members is crucial. The Court also held that Technical Members of

Company Law Tribunals must have expertise in company law or related fields; mere civil service experience does not constitute such expertise. It rejected the assumption that judges lack the necessary skills or that civil servants or professionals from unrelated fields like science or medicine are qualified. The inclusion of technical experts is justified only in areas requiring specialized professional knowledge, not in purely legal domains like company law.

41. In addition to the changes agreed upon by the Union of India, the Court held that the Act may be made operational by making the following amendments to the Act:

> "**120.** …
>
> (i) Only Judges and Advocates can be considered for appointment as Judicial Members of the Tribunal. Only High Court Judges, or Judges who have served in the rank of a District Judge for at least five years or a person who has practiced as a Lawyer for ten years can be considered for appointment as a Judicial Member. Persons who have held a Group A or equivalent post under the Central or State Government with experience in the Indian Company Law Service (Legal Branch) and Indian Legal Service (Grade-1) cannot be considered for appointment as judicial members as provided in sub-section 2(c) and (d) of Section 10-FD. The expertise in Company Law service or Indian Legal service will at best enable them to be considered for appointment as technical members.
>
> (ii) As the NCLT takes over the functions of High Court, the members should as nearly as possible

have the same position and status as High Court Judges. This can be achieved, not by giving the salary and perks of a High Court Judge to the members, but by ensuring that persons who are as nearly equal in rank, experience or competence to High Court Judges are appointed as members. Therefore, only officers who are holding the ranks of Secretaries or Additional Secretaries alone can be considered for appointment as Technical members of the National Company Law Tribunal. Clauses (c) and (d) of sub-section (2) and Clauses (a) and (b) of sub-section (3) of section 10-FD which provide for persons with 15 years experience in Group A post or persons holding the post of Joint Secretary or equivalent post in Central or State Government, being qualified for appointment as Members of Tribunal, are invalid.

(iii) A 'Technical Member' presupposes an experience in the field to which the Tribunal relates. A member of Indian Company Law Service who has worked with Accounts Branch or officers in other departments who might have incidentally dealt with some aspect of Company Law cannot be considered as 'experts' qualified to be appointed as Technical Members. Therefore Clauses (a) and (b) of sub-section (3) are not valid.

(iv) The first part of clause (f) of sub-section (3) providing that any person having special knowledge or professional experience of 20 years in science, technology, economics, banking, industry could be considered to be persons with expertise in company law, for being appointed as Technical Members in Company Law Tribunal, is invalid.

(v) Persons having ability, integrity, standing and special knowledge and professional experience of not less than fifteen years in industrial finance, industrial management, industrial reconstruction, investment and accountancy, may however be considered as persons having expertise in rehabilitation/revival of companies and therefore, eligible for being considered for appointment as Technical Members.

(vi) In regard to category of persons referred in clause (g) of sub-section (3) at least five years experience should be specified.

(vii) Only Clauses (c), (d), (e), (g), (h), and the latter part of clause (f) in sub-section (3) of section 10-FD and officers of civil services of the rank of the Secretary or Additional Secretary in Indian Company Law Service and Indian Legal Service can be considered for purposes of appointment as Technical Members of the Tribunal.

(viii) Instead of a five-member Selection Committee with the Chief Justice of India (or his nominee) as Chairperson and two Secretaries from the Ministry of Finance and Company Affairs and the Secretary in the Ministry of Labour and Secretary in the Ministry of Law and Justice as members mentioned in section 10-FX, the Selection Committee should broadly be on the following lines:

(a) Chief Justice of India or his nominee – Chairperson (with a casting vote);

(b) A senior Judge of the Supreme Court or Chief Justice of High Court - Member;

(c) Secretary in the Ministry of Finance and Company Affairs - Member; and

(d) Secretary in the Ministry of Law and Justice -Member.

(ix) The term of office of three years shall be changed to a term of seven or five years subject to eligibility for appointment for one more term. This is because considerable time is required to achieve expertise in the field concerned. A term of three years is very short and by the time the members achieve the required knowledge, expertise and efficiency, one term will be over. Further the said term of three years with the retirement age of 65 years is perceived as having been tailor-made for persons who have retired or shortly to retire and encourages these Tribunals to be treated as post-retirement havens. If these Tribunals are to function effectively and efficiently

they should be able to attract younger members who will have a reasonable period of service.

(x) The second proviso to Section 10-FE enabling the President and members to retain lien with their parent cadre/ministry/department while holding office as President or Members will not be conducive for the independence of members. Any person appointed as members should be prepared to totally disassociate himself from the Executive. The lien cannot therefore exceed a period of one year.

(xi) To maintain independence and security in service, sub-section (3) of section 10-FJ and Section 10-FV should provide that suspension of the President/Chairman or member of a Tribunal can be only with the concurrence of the Chief Justice of India.

(xii) The administrative support for all Tribunals should be from the Ministry of Law & Justice. Neither the Tribunals nor its members shall seek or be provided with facilities from the respective sponsoring or parent Ministries or concerned Department.

(xiii) Two-Member Benches of the Tribunal should always have a judicial member. Whenever any larger or special benches are constituted, the number of Technical Members shall not exceed the Judicial Members."

(v) Madras Bar Association v. Union of India and Another

42. Subsequently, the constitutional validity of the *National Tax Tribunal*[10] *Act, 2005*, was challenged in ***Madras Bar Association v. Union of India and Another***[11]

[10] **Hereinafter, "NTT".**
[11] **(2014) 10 SCC 1**

(hereinafter referred to as **MBA (II)**). The NTT Act was declared unconstitutional for diluting the independence of the judiciary and tribunals. Writing the lead opinion, Chief Justice Khehar held that allowing the Central Government to determine the jurisdiction, composition, and transfer of NTT benches compromised judicial independence, since the Government itself would be a litigant in all cases before the Tribunal. The Court held that for the NTT Act to be valid, its Chairperson and Members must enjoy the same independence and security as High Court judges. Granting the Central Government control over the jurisdiction and posting of Members compromised that independence, exposing them to potential pressure or punitive transfers. Hence, the NTT Act failed to insulate the Tribunal from executive influence.

43. Referring to ***L. Chandra Kumar*** *(supra)* and **MBA (I)**, the Court reiterated that non-judicial or technical members can only be appointed where specialized expertise is essential, not where purely legal questions are involved. Since the NTT was constituted to decide substantial questions of law across diverse subjects such as tax, company, contract, and property law, only persons with legal qualifications and substantial

experience in law could competently discharge these functions. Appointing accountant or technical members without legal expertise would dilute judicial standards and violate the independence of the judiciary. Hence, the Court held that the NTT Act failed to meet constitutional standards.

44. The Court also held that Section 7 of the NTT Act was unconstitutional as it failed to ensure judicial independence in the selection process. Unlike administrative tribunals subordinate to High Courts, the NTT was meant to replace High Courts, and therefore its Chairperson and Members had to be appointed through a process similar to that for High Court judges.[12] The Court held that the inclusion of Central Government Secretaries, whose ministries would themselves appear as litigants before the NTT, in the selection committee

[12] **It was held:** "130. …The manner of appointment of Chairperson/Members to the NTT will have to be, by the same procedure (or by a similar procedure), to that which is prevalent for appointment of judges of High Courts. Insofar as the instant aspect of the matter is concerned, the above proposition was declared by this Court in *Union of India v. Madras Bar Association* (2010) 11 SCC 1, wherein it was held, that the stature of the Members who would constitute the tribunal, would depend on the jurisdiction which was being transferred to the tribunal. Accordingly, if the jurisdiction of the High Courts is being transferred to the NTT, the stature of the Members of the tribunal had to be akin to that of the judges of High Courts. So also the conditions of service of its Chairperson/Members. And the manner of their appointment and removal, including transfers. Including, the tenure of their appointments."

undermined impartiality and breached constitutional conventions meant to preserve the separation of powers.[13]

45. The Court observed that under Section 8 of the NTT Act, the Chairperson and Members were appointed for a term of five years, with eligibility for reappointment for another five years. It agreed with the petitioners therein that the possibility of reappointment would compromise the independence of the Tribunal, as members might decide cases with an eye on securing another term rather than exercising independent judgment. Since the NTT replaced the jurisdiction of High Courts, all aspects of appointment and tenure had to remain free from executive interference. For these reasons, the Court declared Section 8 of the NTT Act unconstitutional.

[13] **It was held:** "131. Section 7 cannot even otherwise, be considered to be constitutionally valid, since it includes in the process of selection and appointment of the Chairperson and Members of the NTT, Secretaries of Departments of the Central Government. In this behalf, it would also be pertinent to mention, that the interests of the Central Government would be represented on one side, in every litigation before the NTT. It is not possible to accept a party to a litigation, can participate in the selection process, whereby the Chairperson and Members of the adjudicatory body are selected. This would also be violative of the recognized constitutional convention recorded by Lord Diplock in *Hinds v. R.*, 1977 AC 195, namely, that it would make a mockery of the constitution, if the legislature could transfer the jurisdiction previously exercisable by holders of judicial offices, to holders of a new court/tribunal (to which some different name was attached) and to provide that persons holding the new judicial offices, should not be appointed in the manner and on the terms prescribed for appointment of Members of the judicature. For all the reasons recorded hereinabove, we hereby declare Section 7 of the NTT Act, as unconstitutional."

(vi) Madras Bar Association v. Union of India and Another

46. Another judgment to be referred here is ***Madras Bar Association v. Union of India and Another***[14] (hereinafter **MBA (III)**). The validity of *Companies Act 2013*, which replaced the earlier Act of 1956, was challenged. It was contended that the provisions governing the structure, composition, and selection process of the NCLT and NCLAT under the *Companies Act, 2013*, mirror those earlier provisions whose *vires* were declared unconstitutional by the **MBA (I)** judgment in 2010. The creation of NCLT and NCLAT was upheld, but several provisions were declared to be invalid for deviating from the **MBA (I)** judgment.

47. The Court rejected the government's justification that the shortage of officers at the Additional Secretary level warranted allowing Joint Secretaries to serve as Technical Members, holding that such reasoning was legally untenable and contrary to the binding 2010 **MBA (I)** judgment. It emphasized that the earlier decision had cautioned against the gradual erosion of judicial independence through dilution of

[14] **(2015) 8 SCC 583**

qualifications and standards for those exercising judicial functions. Any deviation, the Court held, would compromise the safeguards so firmly secured in 2010. Accordingly, Sections 409(3)(a) and (c) and 411(3) of the *Companies Act, 2013* were declared invalid, and the directions in paragraph 120 of the 2010 **MBA (I)** judgment were ordered to be followed for appointments.

48. The Court further held that the composition of the Selection Committee under Section 412(2), comprising five members with a majority from the executive, violated the 2010 **MBA (I)** judgment. The proper composition should be a four-member committee chaired by the Chief Justice of India or his nominee, with a casting vote to ensure judicial primacy. Since the existing provision undermined that principle, Section 412(2) was struck down as invalid. The Court directed the government to promptly amend the provisions to bring them in line with its directions so that the NCLT and NCLAT could begin functioning with full independence and integrity.

49. After this line of judgments, Parliament enacted the *Finance Act, 2017*, which subsumed provisions relating to the appointment, tenure, service conditions, and functioning of

members across various tribunals under a single legislative umbrella. Part XIV of the Act introduced an extensive framework titled "Amendments to Central Acts to Provide for Merger of Tribunals and Other Authorities and Conditions of Service of Chairpersons, Members, etc." A key provision under this Part was Section 184, which authorizes the Union Government, through notification, to make rules concerning the qualifications, appointment, tenure, salary, allowances, resignation, removal, and other service conditions of the Chairperson, Vice-Chairperson, President, Vice-President, Presiding Officer, or Members of various tribunals and appellate authorities specified in Column (2) of the Eighth Schedule.

50. The first *proviso* to Section 184 empowered the Central Government to prescribe the term of office, subject to a maximum of five years, with eligibility for reappointment. The second *proviso* sets the upper age limits at seventy years for Chairpersons, Presidents, and Presiding Officers (for instance, of the Securities Appellate Tribunal) and sixty-seven years for Vice-Chairpersons, Vice-Presidents, and other Members (such as those of the Industrial Tribunal or Debts Recovery

Tribunal). Sub-section (2) further guarantees that the salary, allowances, or other service conditions of a member cannot be altered to their disadvantage after appointment.

51. The Eighth Schedule lists nineteen tribunals, identifying the statutes under which each was originally constituted. Section 183 overrides those parent enactments, mandating that, from the notified "appointed date," appointments to the listed tribunals must comply with Section 184 of the Finance Act. However, the provision safeguards incumbents already in office before the appointed date, ensuring that they continue under their existing terms and conditions until completion of tenure. Pursuant to Section 184, the Central Government framed the *"Tribunal, Appellate Tribunal and Other Authorities (Qualifications, Experience and Other Conditions of Service of Members) Rules, 2017".*[15]

(vii) Rojer Mathew v. South Indian Bank Limited represented by its Chief Manager and Others

52. The constitutional validity of Part XIV and the 2017 Rules was assailed before a Constitution Bench in ***Rojer Mathew v. South Indian Bank Limited represented by its***

[15] **Hereinafter, "2017 Rules"**

Chief Manager and Others[16] on multiple grounds, including excessive delegation. Writing for the majority in the Constitution Bench, Chief Justice Gogoi upheld the validity of Section 184 of the *Finance Act, 2017*, observing that the power to prescribe qualifications, selection procedures, and service conditions of tribunal members need not remain exclusively with the legislature "for all times and purposes". The majority accepted the learned Attorney General's contention that Section 184 aimed to bring uniformity and harmonization across diverse tribunals. It clarified that if any delegated legislation made under Section 184 exceeds the limits of the parent statute or violates constitutional principles, such rules can be struck down individually without affecting the constitutionality of the rule-making power. Applying this principle, the Court struck down the 2017 Rules.

53. The majority, however, found that the 2017 Rules weakened the independence of tribunals by allowing excessive executive control. It was held:

> "**140.** …Independence of the institution refers to sufficient degree of separation from other branches of the government, especially when the branch is a litigant or one of the parties before the tribunal.

[16] **(2020) 6 SCC 1**

> Functional independence would include method of selection and qualifications prescribed, as independence begins with appointment of persons of calibre, ability and integrity. Protection from interference and independence from the executive pressure, fearlessness from other power centres – economic and political, and freedom from prejudices acquired and nurtured by the class to which the adjudicator belongs, are important attributes of institutional independence."

54. It held that the composition of the Search-cum-Selection Committees under the 2017 Rules, dominated by executive nominees with minimal judicial representation, "is an attempt to keep the judiciary away from the process of selection and appointment of Members, Vice-Chairman and Chairman of Tribunals." This violated the doctrine of separation of powers and undermined the independence of the judiciary and tribunals. It stated:

> "**148.** Composition of a Search-cum-Selection Committee is contemplated in a manner whereby appointments of Member, Vice President and President are predominantly made by nominees of the Central Government. A perusal of the Schedule to the Rules shows that save for token representation of the Chief Justice of India or his nominee in some Committees, the role of the judiciary is virtually absent.
>
> **149.** …The exclusion of the Judiciary from the control and influence of the Executive is not limited to traditional Courts alone, but also includes Tribunals since they are formed as an alternative to Courts and perform judicial functions."

55. The Court further held that since the Executive is often a party to litigation before tribunals, it cannot be permitted to play a dominant role in appointing their members. Drawing from the **Fourth Judges Case**,[17] the Court emphasized that executive control must be excluded from the appointment process of bodies performing judicial or quasi-judicial functions. It concluded that the composition of the Search-cum-Selection Committees under the 2017 Rules violated the constitutional scheme, as it diluted judicial involvement and amounted to executive encroachment on the independence of the judiciary.

56. Directions were given to the Union of India for framing of fresh set of Rules in accordance with the judgment. As an interim order, it was directed that appointments to the Tribunal/Appellate Tribunal and the terms and conditions of appointment shall be in terms of the respective statutes before the enactment of the *Finance Bill, 2017*.

57. In his concurring opinion, Justice D.Y. Chandrachud (as his Lordship then was) observed that vesting the executive

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[17] ***Supreme Court Advocates-on-Record Association and Another v. Union of India (Recusal Matter)*** **(2015) 5 SCC 808**

with the power to frame rules governing tribunals has a direct bearing on their independence, as it allows the executive to influence key aspects of their functioning and composition. In his judgment, Chandrachud, J. observed thus:

> "**326.** The basic postulate of our Constitution is that every authority is subservient to constitutional supremacy. No authority can assume to itself the ultimate power to decide the limits of its own constitutional mandate. Judicial review is intended to ensure that every constitutional authority keeps within the bounds of its constitutional functions and authority. In holding a constitutional institution within its bounds, judicial review does not trench upon the doctrine of separation of powers. The adjudicatory power vests in the Supreme Court as a constitutional court. In adjudicating on whether there has been a violation of a constitutional mandate in passing a Bill as a Money Bill, judicial review does not traverse beyond the limit set by the separation of powers. On the contrary, the independence of judicial tribunals has been consistently recognised by this Court as an inviolable feature of the basic structure of the Constitution. Determination of the norms of eligibility, the process of selection, conditions of service, and those regulating the impartiality with which the members of the tribunals discharge their functions and their effectiveness as adjudicatory bodies is dependent on their isolation from the executive. By leaving the rule making power to the uncharted wisdom of the executive, there has been a self-effacement by Parliament. The conferment of the power to frame rules on the executive has a direct impact on the independence of the tribunals. Allowing the executive a controlling authority over diverse facets of the tribunals would be destructive of judicial independence which constitutes a basic feature of the Constitution."

58. Justice Chandrachud endorsed the suggestion of the *amicus curiae* to have an independent statutory body called the "National Tribunals Commission" to oversee the selection process of members, criteria for appointment, salaries and allowances, introduction of standard eligibility criteria, for removal of Chairpersons and Members, and meeting the requirement of infrastructural and financial resources.

59. Justice Deepak Gupta, in his opinion, held that the qualifications for appointment to tribunals must be specified in the parent legislation and cannot be delegated to the executive. While matters such as pay, allowances, and other service conditions may be delegated, the determination of qualifications is an essential legislative function. He further observed that even if one assumes qualifications could be delegated, the legislation should have contained clear guidelines governing them. It was paradoxical, he noted, that while the Act laid down some guidance on service conditions, it provided none regarding the essential qualifications for appointment. He held that Section 184 of the *Finance Act, 2017* suffered from excessive delegation, as it provided no legislative guidelines for determining qualifications or

eligibility for tribunal appointments, thereby granting the executive unfettered discretion. Justice Chandrachud agreed with Justice Gupta that the qualifications of members to tribunals constitute an essential legislative function and cannot be delegated.

60. Pursuant to the judgment in ***Roger Mathew*** *(supra)*, the Union government notified the *"Tribunal, Appellate Tribunal and other Authorities [Qualification, Experience and Other Conditions of Service of Members] Rules, 2020"*,[18] which governed the qualifications and appointment of members, the procedure for inquiries into misconduct, as well as their house rent allowance and other service conditions.

(viii) Madras Bar Association v. Union of India and Another

61. The constitutional validity of the 2020 Rules was challenged in ***Madras Bar Association v. Union of India and Another***[19] (hereinafter **"MBA (IV)**). It was contended that the composition of the Search-cum-Selection Committees under the 2020 Rules failed to ensure judicial dominance. The petitioners therein also argued that the appointment of

[18] **Hereinafter, "2020 Rules"**
[19] **(2021) 7 SCC 369**

non-judicial persons to posts meant for judicial members or presiding officers was contrary to earlier judgments of the Court. Further, the fixed tenure of four years prescribed for members was alleged to be inconsistent with previous judicial directions mandating a longer term to secure independence. It was also pointed out that advocates had been excluded from eligibility for appointment to most tribunals. Finally, the petitioners therein submitted that the continued executive control over appointments and service conditions reflected a clear breach of the constitutional principles of judicial independence and separation of powers.

62. At the outset, the three-judge Bench observed that:

> "**1.** This Court is once again, within the span of a year, called upon to decide the constitutionality of various provisions concerning the selection, appointment, tenure, conditions of service, and ancillary matters relating to various tribunals, 19 in number, which act in aid of the judicial branch. That the judicial system and this Court in particular has to live these déjàvu moments, time and again (exemplified by no less than four constitution bench judgments) in the last 8 years, speaks profound volumes about the constancy of other branches of governance, in their insistence regarding these issues. At the heart of this, however, are stakes far greater: the guarantee of the rule of law to each citizen of the country, with the concomitant guarantee of equal protection of the law. This judgment is to be read as a sequel, and together with

> the decision of the Constitution Bench in *Rojer Mathew v. South Indian Bank Limited* (2020) 6 SCC 1."

63. The Court noted that the impugned 2020 Rules replicate the 2017 Rules in respect of the constitution of the Search-cum-Selection Committees, insofar as they do not ensure judicial dominance. The Court accepted the learned Attorney General's assurance that the Chief Justice of India or his nominee, as Chairperson of the Search-cum-Selection Committee, would be given a casting vote to ensure judicial dominance in tribunal appointments. It also approved the submission that, ordinarily, the Chairperson of a tribunal would be a retired Supreme Court Judge or Chief Justice of a High Court. The Court also accepted the learned Attorney General's submission that the 2020 Rules would be amended to provide that whenever the reappointment of a Tribunal's Chairperson or President is under consideration, they shall be replaced on the Search-cum-Selection Committee by a retired Supreme Court Judge or retired Chief Justice of a High Court, nominated by the Chief Justice of India.

64. The Court further held that the Secretary of the sponsoring or parent Department shall act as the Member-

Secretary or Convener of the Search-cum-Selection Committee, but shall not have any voting rights in its proceedings. It was held:

> "**33.** It has been repeatedly held by this Court that the Secretaries of the sponsoring departments should not be members of the Search-cum-Selection Committee. We are not in agreement with the submission of the learned Attorney General that the Secretary of the sponsoring department being a member of the Search-cum-Selection Committee was approved by this Court in *Union of India v. Madras Bar Association* (2010) 11 SCC 1 and it would prevail over the later judgment in *Madras Bar Association v. Union of India* (2014) 10 SCC 1. We have already referred to the findings recorded in paragraph 70 of the judgment in *Union of India v. Madras Bar Association* (2010) 11 SCC 1 that the sponsoring department should not have any role to play in the matter of appointment to the posts of Chairperson and members of the Tribunals. Though the ultimate direction of the Court was to constitute a Search-cum-Selection Committee for appointment of members to NCLT and NCLAT of which Secretary, Ministry of Finance and Company Affairs is a member, the ratio of the judgment is categorical, which is to the effect that Secretaries of the sponsoring departments cannot be members of the Search-cum-Selection Committee. We, therefore, see no conflict of opinion in the two judgments as argued by the learned Attorney General. However, we find merit in the submission of the learned Attorney General that the presence of the Secretary of the sponsoring or parent department in the Search-cum-Selection Committee will be beneficial to the selection process. But, for reasons stated above, it is settled that the Secretary of the parent or sponsoring Department cannot have a say in the process of selection and service conditions of the members of Tribunals. Ergo, the Secretary to the sponsoring or

> parent Department shall serve as the Member-Secretary/Convener to the Search-cum-Selection Committee and shall function in the Search-cum-Selection Committee without a vote."

65. The Court directed the Government of India to constitute Search-cum-Selection Committees in line with earlier judgments. To summarize, the Chief Justice of India or his nominee shall act as Chairperson, joined by the Tribunal Chairperson (if a retired Supreme Court or High Court Chief Justice) and two Government Secretaries. Where the Tribunal is not headed by a judicial member, the Committee shall include a retired Supreme Court or High Court Chief Justice nominated by the CJI, along with Secretaries from the Law Ministry and another non-parent department. The Secretary of the parent department shall serve only as Member-Secretary or Convener, without voting rights.

66. The Court held that the recommendations of the Search-cum-Selection Committee must be final, and the executive should have no discretion in tribunal appointments. However, taking note of practicalities, it also held that the Search-cum-Selection Committee may recommend one additional candidate to be placed on a waiting list. It was held:

> "**35.** Rule 4 (2) of the Rules postulates that a panel of two or three persons shall be recommended by the Search-cum-Selection Committee from which the appointments to the posts of Chairperson or members of the Tribunal shall be made by the Central Government……."
>
> **36.** Accordingly, we direct that Rule 4(2) of the 2020 Rules shall be amended and till so amended, that it be read as empowering the Search-cum-Selection Committee to recommend the name of only one person for each post. However, taking note of the submissions made by the learned Attorney General regarding the requirement of the reports of the selected candidates from the Intelligence Bureau, another suitable person can be selected by the Search-cum-Selection Committee and placed in the waiting list. In case, the report of the Intelligence Bureau regarding the selected candidate is not satisfactory, then the candidate in the waiting list can be appointed."

67. The Court held that the 2020 Rules are "not in compliance" with the principles established in **MBA (I)** and ***Rojer Mathew*** *(supra)*. The 2020 Rules prescribed a short tenure for tribunal members, which the Court had consistently found to be harmful to the independence and effectiveness of tribunals. It stated:

> "**39.** This Court directed the extension of the tenure of the members of the Tribunal from three years to seven or five years subject to their eligibility in the case of *Union of India v. Madras Bar Association* (2010) 11 SCC 1. This Court was of the opinion that the term of three years is very short and by the time the members achieve the required knowledge, expertise and efficiency, the term would be over. In

> the said judgment it was further observed that the Tribunals would function effectively and efficiently only when they are able to attract younger members who have a reasonable period of service. In spite of the above precedent, a tenure of three years was fixed for the members of Tribunals in the 2017 Rules. While setting aside the 2017 Rules, this Court in *Rojer Mathew* (2020) 6 SCC 1 held that a short period of service of three years is anti-merit as it would have the effect of discouraging meritorious candidates to accept the posts of judicial members in the Tribunals. In addition, this Court was also convinced that the short tenure of members increases interference by the executive jeopardizing the independence of the judiciary."

68. The Court held that the four-year tenure prescribed under Rules 9(1) and 9(2) of the 2020 Rules was unjustified and contrary to earlier judgments emphasizing longer terms for tribunal independence. It directed the Government to amend the Rules, fixing the tenure of the Chairperson, President, or Chairman at five years or until the age of 70, and for Vice-Chairpersons and Members at five years or until the age of 67, whichever is earlier. It stated:

> "**40.** …Rule 9(1) of the 2020 Rules provide for a term of four years or till a Chairman or Chairperson or President attains the age of 70 years whichever is earlier. No rationale except that four years is more than three years prescribed in the 2017 Rules (described as too short, in *Roger Mathew* (2020) 6 SCC 1) was put forward on behalf of the Union of India. In so far as the posts of Vice Chairman or Vice-Chairperson or Vice-President and members are

> concerned, Rule 9(2) fixes the tenure as four years or till they attain the age of 65 years whichever is earlier. In view of the law laid down in the earlier judgments, we direct the modification of the tenure in Rules 9(1) and 9(2) of the 2020 Rules as five years in respect of Chairman or Chairperson, Vice Chairman or Vice-Chairperson and the members. Rule 9(1) permits a Chairman, Chairperson or President of the Tribunal to continue till 70 years which is in conformity with Parliamentary mandate in Section 184 of the Finance Act. However, Rule 9(2) provides that Vice Chairman and other members shall hold office till they attain 65 years. We are in agreement with the submission made by the learned Amicus Curiae that under the 2020 Rules, the Vice Chairman, Vice-Chairperson or Vice-President or members in almost all the Tribunals will have only a short tenure of less than three years if the maximum age is 65 years. We, therefore, direct the Government to amend Rule 9 (1) of the 2020 Rules by making the term of Chairman, Chairperson or President as five years or till they attain 70 years, whichever is earlier and other members dealt with in Rule 9(2) as five years or till they attain 67 years, whichever is earlier."

69. The Court also noted that although the 2020 Rules do not expressly provide for reappointment, Section 184 of the *Finance Act, 2017* permits it. Noting the learned Attorney General's submission that members of tribunals shall be eligible for reappointment, the Court held that reappointment for at least one term "shall be provided to the persons who are appointed to the Tribunals at a young age by giving preference to the service rendered by them."

70. The Court was not satisfied with the mandate of the Rule 15 of the 2020 Rules, which provided that the Chairperson and the other members of the Tribunals shall be entitled to house rent allowance at the same rate admissible to officers of the Government of India holding grade 'A' posts carrying the same pay. The Court held that the Government of India must make earnest efforts to provide suitable housing for tribunal Chairpersons and Members. It directed for the following change in the said Rule:

> "**43.** Experience has shown that lack of housing in Delhi has been one of the reasons for retired Judges of the High Courts and the Supreme Court to not accept appointments to Tribunals. At the same time, scarcity of housing is also a factor which needs to be kept in mind. The only way to find a solution to this problem is to direct the Government of India to make serious efforts to provide suitable housing to the Chairperson and the members of the Tribunals and in case providing housing is not possible, to enhance the house rent allowance to Rs.1,25,000/- for members of Tribunals and Rs.1,50,000/- for the Chairman or Chairperson or President and Vice Chairman or Vice Chairperson or Vice-President of Tribunals. In other words, an option should be given to the Chairperson and the members of the Tribunals to either apply for housing accommodation to be provided by the Government of India as per the existing rules or to accept the enhanced house rent allowance. This direction shall be effective from 01.01.2021."

71. It was further contended that the 2020 Rules deliberately excluded advocates from appointment as judicial members in most tribunals by imposing an arbitrary 25-year practice requirement, which was absent in earlier laws and rules. It was argued that such exclusion contradicts the *Finance Act, 2017* and previous court rulings recognizing advocates (qualified to be High Court judges) as eligible judicial members. The *amicus* added that the 25-year threshold would discourage capable advocates from applying and lead to less competent selections, suggesting instead a 15-year practice requirement and inclusion of advocates even in single-member tribunals like Debt Recovery Tribunals. The learned Attorney General defended the rule as a policy decision aimed at ensuring parity with Indian Legal Service officers but agreed to amend the 2020 Rules to make advocates with 25 years of experience eligible for such appointments. He further submitted that, since advocates typically attain seniority around age 45, the 25-year criterion would make them eligible around age 47–48, making tribunal appointments a viable and attractive option, especially with the possibility of reappointment. On this point, the Court held:

> "**46.** In view of the submission of the learned Attorney General that the 2020 Rules will be amended to make Advocates eligible for appointment to the post of judicial members of the Tribunals, the only question that remains is regarding their experience at the bar… As the qualification for an advocate of a High Court for appointment as a Judge of a High Court is only 10 years, we are of the opinion that the experience at the bar should be on the same lines for being considered for appointment as a judicial member of a Tribunal. Exclusion of Advocates in 10 out of 19 tribunals, for consideration as judicial members, is therefore, contrary to *Union of India v. Madras Bar Association* (2010) 11 SCC 1 and *Madras Bar Association v. Union of India* (2015) 8 SCC 583. However, it is left open to the Search-cum-Selection Committee to take into account in the experience of the Advocates at the bar and the specialization of the Advocates in the relevant branch of law while considering them for appointment as judicial members."

72. The Court set out its reasoning for reducing the eligibility criteria to allow younger advocates to be appointed as judicial members in tribunals in the following terms:

> "**50.** We would wish to emphasize here that the setting up of tribunals, and the subject matters they are expected to deal with, having regard to the challenges faced by a growing modern economy, are matters of executive policy. When it comes to personnel who would operate these tribunals (given that the issues they decide would ultimately reach this Court, in appellate review or in some cases, judicial review), competence, especially in matters of law as well as procedure to be adopted by such judicial bodies, becomes matters of concern for this Court. These tribunals discharge a judicial role, and with respect to matters entrusted to them, the

> jurisdiction of civil courts is usually barred. Therefore, wherever legal expertise in the particular domain is implicated, it would be natural that advocates with experience in the same, or ancillary field would provide the "catchment" for consideration for membership. This is also the case with selection of technical members, who would have expertise in the scientific or technical, or wherever required, policy background. These tribunals are expected to be independent, vibrant and efficient in their functioning. Appointment of competent lawyers and technical members is in furtherance of judicial independence. Younger advocates who area round 45 years old bring in fresh perspectives. Many states induct lawyers just after 7 years of practice directly as District Judges. If the justice delivery system by tribunals is to be independent and vibrant, absorbing technological changes and rapid advances, it is essential that those practitioners with a certain vitality, energy and enthusiasm are inducted. 25 years of practice even with a five-year degree holder, would mean that the minimum age of induction would be 48 years: it may be more, given the time taken to process recommendations. Therefore, a tenure without assured re-engagements would not be feasible. A younger lawyer, who may not be suitable to continue after one tenure (or is reluctant to continue), can still return, to the bar, than an older one, who may not be able to piece her life together again."

73. The provision that made the members of the Indian Legal Service eligible for appointment as judicial members in certain tribunals was also under challenge. This was upheld by the Court for the following reasons:

> "**49.** As we have already held that Advocates are entitled to be considered as judicial members of the Tribunals, we see no harm in members of the Indian Legal Service being considered as judicial members, provided they satisfy the criteria relating to the standing at the bar and specialization required. The judgment of *Union of India v. Madras Bar Association* (2010) 11 SCC 1 did not take note of the above points relating to the experience of members of Indian Legal Service at the bar. The Indian Legal Service was considered along with the other civil services for the purpose of holding that the members of Indian Legal Service are entitled to be appointed only as technical members. In the light of the submission made by the learned Attorney General and the Amicus Curiae, we hold that the members of Indian Legal Service shall be entitled to be considered for appointment as a judicial member subject to their fulfilling the other criteria which advocates are subjected to. In addition, the nature of work done by the members of the Indian Legal Service and their specialization in the relevant branches of law shall be considered by the Search-cum-Selection Committee while evaluating their candidature."

74. The Court noted that under Rule 8 of the 2020 Rules, the Union Government conducts a preliminary scrutiny of complaints against tribunal members before referring them to the Search-cum-Selection Committee for inquiry. The Court agreed with the learned Attorney General's clarification that the initial scrutiny is meant only to weed out frivolous complaints and that the Government shall implement the Committee's recommendations. The Court agreed with this

interpretation and accepted the learned Attorney General's submission.

75. The Court also observed that the growing pendency of cases in tribunals is largely due to vacancies caused by delays in appointments. Emphasizing the need to ensure speedy justice, it directed the Government of India to complete appointments within three months of receiving the Search-cum-Selection Committee's recommendations.

76. The Court rejected the learned Attorney General's contention that the 2020 Rules should be deemed effective retrospectively from 26th May 2017, the date on which the 2017 Rules came into force. It held that, since the 2017 Rules had already been struck down in ***Rojer Mathew*** *(supra)*, the 2020 Rules, notified on 12th February 2020, could operate only prospectively. The Court further clarified that subordinate legislation cannot have retrospective effect unless expressly authorized by the parent statute.

77. The Court held that appointments made before the enforcement of the 2020 Rules, including those during the pendency of ***Rojer Mathew*** *(supra)* and pursuant to its interim orders, shall be governed by the respective parent Acts and

earlier Rules. However, appointments made after 12th February 2020, the date the 2020 Rules came into force, shall be governed by those Rules, subject to the modifications directed by the Court.

78. The Court also directed the Union of India to establish a National Tribunals Commission at the earliest. It was observed that creating such a body would strengthen the credibility and independence of tribunals and build public confidence in their functioning. It emphasized that tribunals' continued dependence on their parent ministries for administrative and financial needs keeps them under executive control, undermining judicial autonomy. Judicial independence, the Court noted, can be ensured only when tribunals have access to adequate infrastructure and resources independent of the executive. As an interim measure, until the Commission is constituted, the Court directed the establishment of a separate "Tribunals Wing" within the Ministry of Finance to handle and finalize all administrative matters relating to tribunals.

79. The Court summarized its directions as follows:

"**60.** The upshot of the above discussion leads this court to issue the following directions:

60.1 The Union of India shall constitute a National Tribunals Commission which shall act as an independent body to supervise the appointments and functioning of Tribunals, as well as to conduct disciplinary proceedings against members of Tribunals and to take care of administrative and infrastructural needs of the Tribunals, in an appropriate manner. Till the National Tribunals Commission is constituted, a separate wing in the Ministry of Finance, Government of India shall be established to cater to the requirements of the Tribunals.

60.2 Instead of the four-member Search-cum-Selection Committees provided for in Column (4) of the Schedule to the 2020 Rules with the Chief Justice of India or his nominee, outgoing or sitting Chairman or Chairperson or President of the Tribunal and two Secretaries to the Government of India, the Search-cum-Selection Committees should comprise of the following members:

(a) The Chief Justice of India or his nominee—Chairperson (with a casting vote).

(b) The outgoing Chairman or Chairperson or President of the Tribunal in case of appointment of the Chairman or Chairperson or President of the Tribunal (or) the sitting Chairman or Chairperson or President of the Tribunal in case of appointment of other members of the Tribunal (or) a retired Judge of the Supreme Court of India or a retired Chief Justice of a High Court in case the Chairman or Chairperson or President of the Tribunal is not a

Judicial member or if the Chairman or Chairperson or President of the Tribunal is seeking re-appointment— member;

(c) Secretary to the Ministry of Law and Justice, Government of India— member;

(d) Secretary to the Government of India from a department other than the parent or sponsoring department, nominated by the Cabinet Secretary— member;

(e) Secretary to the sponsoring or parent Ministry or Department— Member Secretary/Convener (without a vote).

Till amendments are carried out, the 2020 Rules shall be read in the manner indicated.

60.3 Rule 4(2) of the 2020 Rules shall be amended to provide that the Search-cum-Selection Committee shall recommend the name of one person for appointment to each post instead of a panel of two or three persons for appointment to each post. Another name may be recommended to be included in the waiting list.

60.4 The Chairpersons, Vice-Chairpersons and the members of the Tribunal shall hold office for a term of five years and shall be eligible for reappointment. Rule 9(2) of the 2020 Rules shall be amended to provide that the Vice-Chairman, Vice-Chairperson and Vice President and other members shall hold office till they attain the age of sixty-seven years.

60.5 The Union of India shall make serious efforts to provide suitable housing to the Chairman or Chairperson or President and other members of the Tribunals. If providing housing is not possible, the Union of India shall pay the Chairman or Chairperson or President and Vice-Chairman, Vice-Chairperson, Vice President of the Tribunals an amount of Rs. 1,50,000/- per month as house rent

allowance and Rs. 1,25,000/- per month for other members of the Tribunals. This direction shall be effective from 01.01.2021.

60.6 The 2020 Rules shall be amended to make advocates with an experience of at least 10 years eligible for appointment as judicial members in the Tribunals. While considering advocates for appointment as judicial members in the Tribunals, the Search-cum-Selection Committee shall take into account the experience of the Advocate at the bar and their specialization in the relevant branches of law. They shall be entitled for reappointment for at least one term by giving preference to the service rendered by them for the Tribunals.

60.7 The members of the Indian Legal Service shall be eligible for appointment as judicial members in the Tribunals, provided that they fulfil the criteria applicable to advocates subject to suitability to be assessed by the Search-cum-Selection Committee on the basis of their experience and knowledge in the specialized branch of law.

60.8 Rule 8 of the 2020 Rules shall be amended to reflect that the recommendations of the Search-cum-Selection Committee in matters of disciplinary actions shall be final and the recommendations of the Search-cum-Selection Committee shall be implemented by the Central Government.

60.9 The Union of India shall make appointments to Tribunals within three months from the date on which the Search-cum-Selection Committee completes the selection process and makes its recommendations.

60.10 The 2020 Rules shall have prospective effect and will be applicable from 12.02.2020, as per Rule 1(2) of the 2020 Rules.

60.11 Appointments made prior to the 2017 Rules are governed by the parent Acts and Rules which established the Tribunals concerned. In view of the interim orders passed by the Court in Rojer Mathew (2020) 6 SCC 1, appointments made during the

pendency of Rojer Mathew (2020) 6 SCC 1 were also governed by the parent Acts and Rules. Any appointments that were made after the 2020 Rules came into force i.e. on or after 12.02.2020 shall be governed by the 2020 Rules subject to the modifications directed in the preceding paragraphs of this judgment.

60.12 Appointments made under the 2020 Rules till the date of this judgment, shall not be considered invalid, insofar as they conformed to the recommendations of the Search-cum-Selection Committees in terms of the 2020 Rules. Such appointments are upheld, and shall not be called into question on the ground that the Search-cum-Selection Committees which recommended the appointment of Chairman, Chairperson, President or other members were in terms of the 2020 Rules, as they stood before the modifications directed in this judgment. They are, in other words, saved.

60.13 In case the Search-cum-Selection Committees have made recommendations after conducting selections in accordance with the 2020 Rules, appointments shall be made within three months from today and shall not be subject matter of challenge on the ground that they are not in accord with this judgment.

60.14 The terms and conditions relating to salary, benefits, allowances, house rent allowance etc. shall be in accordance with the terms indicated in, and directed by this judgment.

60.15 The Chairpersons, Vice Chairpersons and members of the Tribunals appointed prior to 12.02.2020 shall be governed by the parent statutes and Rules as per which they were appointed. The 2020 Rules shall be applicable with the modifications directed in the preceding paragraphs to those who were appointed after 12.02.2020. While reserving the matter for judgment on 09.10.2020 *Central Administrative Tribunal (Principal Bench) Bar Assn. v. Union of India 2020 SCC OnLine SC 1124*, we extended the term of the Chairpersons, Vice-

> Chairpersons and members of the Tribunals till 31.12.2020. In view of the final judgment on the 2020 Rules, the retirements of the Chairpersons, Vice-Chairpersons and the members of the Tribunals shall be in accordance with the applicable Rules as mentioned above."

80. The Court also expressed concern over the Government's repeated failure to implement its directions regarding tribunals, noting that such disregard undermines judicial independence and compels repeated litigation. It emphasized that tribunals are integral to the constitutional system of justice and must function independently, effectively, and in a balanced manner between judicial and expert competence. The Court warned that continued executive non-compliance leads to inefficiency and increased court burden. Accordingly, it directed the Government to strictly implement all directions issued by it to ensure tribunal independence and to prevent further litigation by the Madras Bar Association or others on the same issue.

81. After the decision in **MBA (IV)**, the *Tribunal Reforms (Rationalisation and Conditions of Service) Ordinance, 2021*[20] was promulgated on 4th April 2021, introducing amendments

[20] **Hereinafter, "2021 Ordinance"**

to the *Finance Act, 2017*. The first *proviso* to Section 184(1) created a bar on individuals below 50 years of age from being appointed as Chairperson or Member of a tribunal. The second and third *provisos*, read together, equated the allowances and benefits of tribunal members with those of Central Government officers drawing equivalent pay. Further, Section 184(7) mandated that the Selection Committee recommend a panel of two names for each post, with the Central Government required to decide within three months, notwithstanding any court judgment or order. Additionally, Section 184(11), deemed to have effect from 26th May 2017, limited the tenure of Chairpersons and Members to four years, with retirement ages of 70 years and 67 years, respectively. For those appointed between 26th May 2017 and 4th April 2021, if their appointment orders specify a higher tenure or retirement age, it shall prevail but be capped at five years.

(ix) Madras Bar Association v. Union of India and Another

82. The validity of these provisions of the 2021 Ordinance and Sections 184 and 186 (2) of the *Finance Act, 2017* as amended by the 2021 Ordinance was challenged in ***Madras***

Bar Association v. Union of India and Another[21] (hereinafter **MBA (V)**) on the ground of violating the principles of separation of powers and independence of judiciary, and being contrary to directions issued in a series of judgments issued by the Court from **MBA (I)** to **MBA (IV)**.

83. In response, the learned Attorney General argued that Parliament is empowered to cure defects identified by the Court through fresh legislation and that its collective wisdom should not be overridden by judicial intervention. He maintained that determining the service conditions of tribunal members is a matter of legislative policy, warranting judicial restraint. Directions issued by the Court in the absence of legislation, he said, are merely suggestions, not binding. He argued that a subsequent law cannot be struck down for deviating from such directions, and judicial review of the Ordinance must be confined to the standard grounds of review applicable to legislation.

84. At the outset of his analysis, Justice Nageshwar Rao, speaking for the Court, noted that the directions given by the Court in **MBA (IV)** are "in the nature of mandamus". He struck

[21] **(2022) 12 SCC 455**

down the first *proviso* of the amended Article 184(1) of the *Finance Act 2017* for being violative of its previous judgments. It was held that the minimum age limit of 50 years under the first *proviso* to Section 184(1) was "an attempt to circumvent" the ruling in **MBA (IV)**, which had struck down the earlier 25-year experience requirement for advocates. The Court found the provision unconstitutional for violating Article 14 and the doctrine of separation of powers, as it discouraged young advocates from applying and undermined judicial independence. It stated that the judgment of the Court in **MBA (IV)** was "frustrated by an impermissible legislative override." It was further directed that the Income-Tax Appellate Tribunal[22] appointments pursuant to the 2018 advertisement be finalized by considering candidates aged 35 to 50 years as eligible.

85. The Court held that the second and third *provisos* to Section 184(1) were unconstitutional, as they contradicted the directions in **MBA (IV)** regarding the provision of adequate housing and allowances for tribunal members. It was held:

[22] **Hereinafter, "ITAT".**

> "**56.** …By no stretch of imagination can it be said that the said provisos are a result of curative legislation. The direction issued by this Court in MBA (3)[23] for payment of HRA was to ensure that decent accommodation is provided to Tribunal Members. Such direction was issued to uphold independence of the judiciary and it cannot be subject matter of legislative response. A mandamus issued by this Court cannot be reversed by the legislature as it would amount to impermissible legislative override. Therefore, the second proviso, read with the third proviso, to Section 184(1) is declared as unconstitutional."

86. The Court, however, referred to a notification issued by the Ministry of Finance on 30th June 2021, amending the 2020 Rules through the *Tribunal (Amendment) Rules, 2021*. This notification substituted the previous rule to enhance the house rent allowance[24] for tribunal members and chairpersons. The amendment, effective retrospectively from 1st January 2021, allowed Chairpersons, Presidents, and Vice-Chairpersons to receive an HRA of ₹1,50,000 per month, and Members and Presiding Officers ₹1,25,000 per month, or to opt for government accommodation. The Court held that this amendment was consistent with its earlier directions in **MBA (IV)** regarding the provision of suitable housing to ensure

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[23] In the judgment, it is referred to as "MBA (III)", as the judgment did not discuss the decision of Madras *Bar Association v. Union of India* in 2015, which dealt with the provisions of the Companies Act, 2013

[24] **Hereinafter, "HRA"**

judicial independence, and therefore, no further directions were necessary on the issue of HRA.

87. Section 184(7) mandated that the Selection Committee recommend a panel of two names for each post, with the Central Government required to decide preferably within three months, notwithstanding any court judgment or order was on similar line to Rule 4(2) of the 2020 Rules. As mentioned before, the Court in **MBA (IV)** had directed to amend the 2020 Rules to provide that the Search-cum-Selection Committee shall recommend one person for appointment in each post in place of a panel of two or three persons for appointment to each post, and that one more name could be recommended to be included in the waiting list. In defence of the 2021 Ordinance, the learned Attorney General argued that Court cannot direct the legislature to make law, and that the directions in **MBA (IV)** "can only be taken to be a suggestion". The Court rejected this argument and struck down Section 184(7) as amended by the 2021 Ordinance. It held:

> "**60.** …The Court, as a wing of the State, by itself is a source of law. The law is what the Court says it is. To clarify the position relating to Article 141 *vis-à-vis* Article 142, it has been held by this Court in *Ram Pravesh Singh* v. *State of Bihar* (2006) 8 SCC 381 that

directions given under Article 142 are not law laid down by the Supreme Court under Article 141. Any order not preceded by any reason or consideration of any principle is an order under Article 142. Article 136 of the Constitution is a corrective jurisdiction that vests a discretion in the Supreme Court to settle the law clear and as forthrightly forwarded in *Union of India* v. *Karnail Singh* (1995) 2 SCC 728, it makes the law operational to make it a binding precedent for the future instead of keeping it vague. In short, it declares the law, as under Article 141 of the Constitution. "Declaration of law" as contemplated in Article 141 of the Constitution is the speech express or necessarily implied by the highest Court of the land. The law declared by the Supreme Court is binding on all courts within the territory of India under Article 141, whereas, Article 142 empowers the Supreme Court to issue directions to do complete justice. Under Article 142, the Court can go to the extent of relaxing the application of law to the parties or exempting altogether the parties from the rigours of the law in view of the peculiar facts and circumstances of the case (*State of Punjab v. Rafiq Masih* (2014) 8 SCC 883). Sufficient reasons were given in *MBA (IV)*[25] to hold that executive influence should be avoided in matters of appointments to tribunals - therefore, the direction that only one person shall be recommended to each post. The decision of this Court in that regard is law laid down under Article 141 of the Constitution. The only way the legislature could nullify the said decision of this Court is by curing the defect in Rule 4(2). There is no such attempt made except to repeat the provision of Rule 4(2) of the 2020 Rules in the Ordinance amending the Finance Act, 2017. Ergo, Section 184(7) is unsustainable in law as it is an attempt to override the law laid down by this Court……"

[25] In the judgment, it is referred to as "MBA (III)", as the judgment did not discuss the decision of *Madras Bar Association v. Union of India* in 2015, which dealt with the provisions of the Companies Act, 2013

88. The Court held that mere repetition of the same contents of Rule 4(2) of the 2020 Rules by placing them in Section 184(7) is "an indirect method of intruding into judicial sphere which is proscribed".

89. The Court also struck down the second part of Section 184(7), which provided that the Government shall take a decision regarding the recommendations made by the Search-cum-Selection Committee, preferably within a period of three months. It was held:

> "**61.** …The tribunals which are constituted as an alternative mechanism for speedy resolution of disputes have become non-functional due to the large number of posts which are kept unfilled for a long period of time. Tribunals have become ineffective vehicles of administration of justice, resulting in complete denial of access to justice to the litigant public. The conditions of service for appointment to the posts of Chairpersons and Members have been mired in controversy for the past several years, thereby, adversely affecting the basic functioning of tribunals. This Court is aghast to note that some tribunals are on the verge of closure due to the absence of Members. The direction given by this Court for expediting the process of appointment was in the larger interest of administration of justice and to uphold the rule of law. Section 184(7) as amended by the Ordinance permitting the Government to take a decision preferably within three months from the date of recommendation of the SCSC is invalid and unconstitutional, as this amended provision simply seeks to negate the directions of this Court."

90. The Court also struck down Section 184(11) inserted in the 2017 Act, which fixed the tenure of the Chairperson and Member of a tribunal at four years, notwithstanding anything contained in any judgment, order or decree of any court. It held:

> "**62.** …After perusing the law laid down by this Court in *MBA-I* (2010) 11 SCC 1 and *Rojer Mathew* (2020) 6 SCC 1 which held that a short stint is anti-merit, we directed the modification of tenure in Rules 9(1) and 9(2) as five years in respect of Chairpersons and Members of tribunals in *MBA (IV)*.[26] This Court declared in SCC para 60.4 that the Chairperson, Vice-Chairperson and the Members of the tribunals shall hold office for a term of five years and shall be eligible for reappointment. The insertion of Section 184(11) prescribing a term of four years for the Chairpersons and Members of tribunals by giving retrospective effect to the provision from 26.05.2017 is clearly an attempt to override the declaration of law by this Court under Article 141 in *MBA (IV)*. Therefore, clauses (i) and (ii) of Section 184(11) are declared as void and unconstitutional."

91. However, the Court upheld the retrospectivity given to the *proviso* to Section 184 (11), *i.e.*, to appointments that were made to the posts of Chairperson or Members between 26th May 2017 and the notified date of the 2021 Ordinance, 4th April 2021. It held:

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[26] In the judgment, it is referred to as "MBA (III)", as the judgment did not discuss the decision of *Madras Bar Association v. Union of India* in 2015, which dealt with the provisions of the Companies Act, 2013

> "**63.** …The proviso lays down that if the tenure of office or age of retirement specified in the order of appointment issued by the Government is greater than what is specified in Section 184(11), the term of office or the age of retirement of the Chairperson or Members shall be as specified in the order of appointment subject to a maximum term of office of five years. In other words, the term of office of Chairperson and Members of tribunals who were appointed between 26.05.2017 and 04.04.2021 shall be five years even though the order of appointment issued by the Government has a higher term of office or age of retirement which may involve the term of office being more than 5 years in practice…
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> …
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> **64.2** …It is understood that while inserting sub-section (11) in Section 184 in the Finance Act, 2017 and giving it retrospective effect from 26.05.2017, the Ordinance has attempted to cure the defect as was pointed out by this Court in terms of retrospective application while considering the 2020 Rules. However, the implications are not relevant for clauses (i) and (ii) of Section 184(11) which are declared as void and unconstitutional for the reasons mentioned above."

92. In the process, interim directions given by this Court in ***Kudrat Sandhu v. Union of India and Another***[27]are also nullified. It would be relevant to refer to the directions issued by this Court in ***Kudrat Sandhu*** *(supra)* on 9th February 2018. After taking the consent of the learned Attorney General and making modifications incorporating his suggestions, this

[27] **Writ Petition (C) No.279 of 2017 With Connected Matters**

Court held that all selections to the post of Chairperson/ Chairman, Judicial/Administrative Members shall be for a period as provided in the Act and the Rules in respect of all tribunals. On 16th July 2018, this Court directed that persons selected as Members of ITAT can continue till the age of 62 years and persons who were holding the post of President till 65 years. By an order dated 21st August 2018, this Court clarified that a person selected as Member, Customs, Excise and Sales Tax Appellate Tribunal[28] shall continue till the age of 62 years while a person holding the post of President can continue till the age of 65 years. Though, there is nothing wrong with the *proviso* to Section 184(11) being given retrospective effect, the appointments made pursuant to the interim directions passed by this Court cannot be interfered with. This Court in ***Virender Singh Hooda and Others v. State of Haryana and Another***[29] upheld the retrospectivity of the legislation which had been challenged but the appointment of the petitioners therein pursuant to a direction of the Court were saved. It was held that the law does not permit the legislature to take back what has been granted in

[28] **Hereinafter, "CESTAT".**
[29] **(2004) 12 SCC 588**

the implementation of the Court's decision and such a course is impermissible. Similarly, in ***S.R. Bhagwat and Others v. State of Mysore***[30], it was declared that a mandamus against the respondent-State giving financial benefits to the petitioners therein cannot be nullified by a legislation. It is also relevant to point out that even interim orders passed by this Court cannot be overruled by a legislative act, as discussed above. While making it clear that the appointments that are made to the CESTAT on the basis of interim orders passed by this Court shall be governed by the relevant statute and the rules framed thereunder, as they existed prior to the *Finance Act, 2017*, this Court upheld the retrospectivity given to the proviso to Section 184 (11). To clarify further, all appointments after 4th April 2021 shall be governed by the 2021 Ordinance, as modified by the directions contained herein.

93. Justice Rao concluded that the first and second *provisos* to Section 184(1) (fixing a minimum age of 50 years and altering HRA provisions), Section 184(7) (requiring two names per post and government decision within three months), and Section 184(11) (fixing a four-year tenure) were

[30] **(1995) 6 SCC 16**

unconstitutional as they violated the separation of powers, judicial independence, rule of law, and Article 14. He further emphasized that it is imperative for all authorities to take urgent steps to fill vacancies in tribunals without delay, stressing that access to justice and public confidence in the impartial functioning of tribunals must be restored and strengthened.

94. In his concurring opinion, Justice Ravindra Bhat dealt with the argument of the Union of India that when a legislation or legislative instrument (such as an ordinance in this case) is questioned, its validity can be scrutinized only by considering its impact on some express provision of the constitution, and not on any *concept or notion* such as separation of powers and judicial independence. He held:

> "**79.** The challenges to executive or legislative measures based on violation of the twin concepts of separation of powers and independence of the judiciary have to be seen in terms of their impacts, not at one point in time, but cumulatively, over a time continuum…
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> …
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> **81.** In all these decisions, this court's scrutiny was based upon its role as the guardian of the constitution and, more specifically, independence of the judiciary. If one were asked to pinpoint any specific provision of the constitution that this court relied upon while holding the enacted provisions to

be falling afoul of, there would be none. It is too late now to contend that independence of the judiciary and separation of powers are vague concepts based on which Parliamentary reenactment cannot be invalidated.

82. …The Attorney General's assertion that the executive or indeed the Parliament acts within its rights in interpreting the Constitution, and therefore this court should adopt a deferential standard in matters of policy are therefore insubstantial, and also disquieting. As conceded by the Union, if a law (passed validly in exercise of its exclusive power by the Parliament on its interpretation of the Constitution) violates any express provision or principle that lies at the core of any express provision or provisions, this Court's voice is decisive and final.

83. Pertinently, in matters of independence of the judiciary or arrangement of courts or tribunals, when these provisions come up for interpretation, this court would apply a searching scrutiny standard in its judicial review to ensure that the new body, court, tribunal, commission or authority created to adjudicate (between citizens and government agencies or departments, citizens and citizens, or citizens and corporate entities) are efficient, efficacious and inspire public confidence.

…

86. Parliament has, over the years, created several tribunals and commissions which exercise judicial functions that would ordinarily fall within the jurisdiction of courts; they would also have been subjected to the supervisory jurisdiction of High Courts under Article 227. This gradual "hiving off" of jurisdiction from the courts, therefore, calls for a careful and searching scrutiny to ensure that those who approach these bodies are assured of the same kind and quality of justice, infused with what citizens expect from courts, i.e., independence, fairness, impartiality, professionalism and public confidence. These considerations are relevant, given that "policy" choices adopted by the executive or legislature in the

> past, when it concerned dispensation of justice through courts, were the subject matter of scrutiny under judicial review by courts.
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> ...
>
> **89.** This court, therefore, as the ultimate guardian of the Constitution, and the rule of law, which it is sworn to uphold, has been asserting its role in regard to matters of appointment, and other conditions of service of judges of district and other courts. Since tribunals function within the larger ecosystem of administration of justice, and essentially discharge judicial functions, this court is equally concerned with the qualifications, eligibility for appointment, procedure for selection and appointment, conditions of service, etc of their members. This court's concern, therefore, is unlike any other subject matter of judicial review. It cannot be gainsaid that if tenures of tribunals' members are short: say two years, or if their salaries are pegged at unrealistically low levels, or if their presiding members are given no administrative control or powers, the objective of efficient, fair, and impartial justice delivery would be defeated. It cannot then be argued that each of these are "policy" matters beyond the court's domain."

95. Justice Bhat distinguished judicial review concerning tribunals from that involving pure policy matters, explaining that the Court's active intervention is justified in ensuring the independent and efficient functioning of tribunals. He stated:

> "**90.** Ordinarily in pure 'policy' matters falling within Parliamentary or executive domain, such as economic, commercial, financial policies, or other areas such as energy, natural resources etc, this court's standard of judicial review is deferential. In almost all subject matters over which legislative bodies enact law, the wisdom of the policy is rarely

questioned; it is too well recognised that in such matters, judicial review extends to issues concerning liberties of citizens, and further, whether the particular subject matter falls within the legislative field of the legislative body concerned. In matters where the executive implements those laws, the scrutiny extends to further seeing the legality and constitutionality of such action. Where there is no law, the court considers whether executive competence to act is traceable to the particular legislative field under the Constitution, and whether the executive action *sans* law, abridges people's liberties. Deference to matters executive appears to be highest, when the country faces emergencies and existential threats. However, in matters that concern administration of justice, especially where alternative adjudicatory forums are created, the court's concern is greater. This is because the Constitution does not and cannot be read so as to provide two kinds of justice: one through courts, and one through other bodies. The quality and efficacy of these justice delivery mechanisms have to be the same, i.e., the same as that provided by courts, as increasingly, tribunals adjudicate disputes not only between state agencies and citizens, but also between citizens and citizens as well as citizens and powerful corporate entities. Therefore, it is the *"equal protection"* of laws (under Article 14 of the Constitution of India), guaranteed to all persons, through institutions that assure the same competence of its personnel, the same fair procedure, and the same independence of adjudicators as is available in existing courts, that stands directly implicated. Consequently, when this court scrutinizes any law or measure dealing with a new adjudicatory mechanism, it is through the equal protection of law clause under Article 14 of the Constitution."

96. Justice Bhat observed that no parent enactment governing the establishment of various tribunals prescribed

any age qualification (whether as a minimum age requirement or an upper age bar) as part of the eligibility criteria for appointments. He further noted that such an age condition was neither incorporated in the provisions of the *Finance Act, 2017*, nor introduced in the 2017 Rules, which were subsequently struck down in ***Rojer Mathew*** *(supra)*. An indirect age restriction was, for the first time, introduced through the 2020 Rules framed under the *Finance Act, 2017*, by mandating that otherwise qualified advocates and chartered accountants must have a minimum of 25 years of practice. The Court in **MBA (IV)** found this requirement to be unsustainable and directed that it be appropriately amended. Subsequently, and seemingly in response, the impugned Ordinance amended the *Finance Act, 2017* to introduce, for the first time, a direct minimum age requirement of 50 years. Justice Bhat struck down the minimum age requirement, holding:

> "**92.** The challenge to the first proviso to Section 184, which prescribes the age qualification, has to be seen from several angles. First, the underlying parent statutes which created the tribunals (ITAT, CESTAT, TDSAT, CAT) did not prescribe, as an eligibility criterion for selection of candidates as members, any minimum age. The prescription of 50 years as a minimum eligibility criterion, in the opinion of this

court, is without any rationale. The ITAT has existed for the last 79 years; no less than 33 of its members were appointed as judges of various High Courts; one of them (Ranganathan, J.) was appointed to this court. The CESTAT too has comprised advocates who have staffed the tribunal efficiently. The absence of any explanation for the preference given to older persons, in fact leads to an absurd result- as was pointed out in MBA-III (2021) 7 SCC 369 and as has been reiterated by L. Nageswara Rao, J. in his opinion. The Constitution of India makes an advocate who has practiced for more than 10 years, eligible for consideration for appointment as a judge of the High Court and even this Court. An advocate with 7 years' practice with the Bar can be considered for appointment to the position of a District Judge. Prescribing 50 years as a minimum age limit for consideration of advocates has the devastating effect of entirely excluding successful young advocates, especially those who might be trained and competent in the particular subject (such as Indirect Taxation, Anti-Dumping, Income-Tax, International Taxation and Telecom Regulation). The exclusion of such eligible candidates in preference to those who are more than 50 years of age is inexplicable and therefore entirely arbitrary. As this Court in its previous judgment (*Rojer Mathew* (2020) 6 SCC 1*)* has pointed out in another context, the exclusion of such young and energetic legal practitioners could result in not so efficient or competent practitioners left in a field for consideration which would have telling effects on the quality of decisions they are likely to render.

93. Prescribing 50 years' minimum age as a condition for appointment to these tribunals is arbitrary also because absolutely no reason is forthcoming about what impelled Parliament to divert from the long-established criteria of giving weightage to actual practice, reputation, integrity and subject expertise, without a minimum age criterion, in the pleadings in this case, nor in any other cases (*Madras Bar Assn. (2010) 11 SCC 1 Madras Bar Association*

(IV) and Roger Mathew (2020) 6 SCC 1). Such being the case, it is astonishing that in the span of a year (i.e. after the decision in *Roger Mathew (2020) 6 SCC 1)* "new thinking" seems to have prevailed to frame rules excluding advocates who can otherwise, based on their expertise, be considered for appointment to even High Courts.

94. This Court would also observe that the consideration of such younger advocates in the age group of 40-45 years would have long term benefits since the domain knowledge and expertise in such areas (Telecom Regulation, Taxation –both Direct and Indirect, GATT Rules, International Taxation etc.) would be useful in adjudication in these tribunals and lead to a body of jurisprudence. Depending on how such counsel/advocates fare as members of the Tribunal, having regard to their special knowledge of these laws, at a later and appropriate stage, they may even be considered for appointment to High Courts.

95. The age criteria, impugned in this case also leads to wholly anomalous and absurd results. For instance, an advocate with 18 or 20 years' practise, aged 44 years, with expertise in the field of indirect taxation, telecom, or other regulatory laws, would be conversant with the subject matter. Despite being eligible, (as she or he would fulfil the parameters of at least 10 years' practice, in the light of the decision in *MBA IV*) such a candidate would be excluded. On the other hand, an individual who might have practiced law for 10 years, and later served as a private or public sector executive in an entirely unrelated field, but who might be 50 years of age, would be considered eligible, and can possibly secure appointment as a member of a tribunal. Thus, the age criterion would result in filtering out candidates with more relevant experience and qualifications, in preference to those with lesser relevant experience, only on the ground of age.

…

98. Given that the essential educational qualifications and experience in the relevant field are

fixed for all candidates, for a classification based on minimum age for appointment (like in the present case) to succeed, the Union cannot say that it should be held to be valid, irrespective of the nature and purposes of the classification or the quality and extent of the difference in experience between candidates. As between someone with 18 years' experience but aged 42 or 43 years, and someone with only 12 years' experience, if a system of weightage for experience and qualification were to be applied, the one with greater experience would in all likelihood be selected. Then, to say that one with lesser experience, but who is more aged should be selected and appointed, not only eliminating the one with more experience, but even *disqualifying* her or him, would mean that better candidates have to be overlooked and those with lesser experience would be appointed, solely on the ground that the latter is over 50 years of age…

99. In the present case, the rule has the effect of excluding deserving candidates, without subserving any discernible public policy or goal. Thus, the classification is based on no justifiable rationale; nor can it be said that the age criterion has some nexus with the object sought to be achieved, such as greater efficiency or experience.

…

103. In the present case, therefore, the qualification of a minimum age of 50 years as essential for appointment, is discriminatory because it is neither shown to have a rational nexus with the object sought to be achieved, i.e. appointing the most meritorious candidates; nor is it shown to be based on any empirical study or data that such older candidates fare better, or that younger candidates with more relevant experience would not be as good, as members of tribunals. It is plain and simple, discrimination based on age. The criterion (of minimum 50 years of age) is virtually "picked out from a hat" (An expression used in an analogous context, while declaring a cut-off date to be arbitrary,

> in *D.R. Nim v. Union of India* AIR 1967 SC 1301) and wholly arbitrary."

97. Justice Bhat also held that the experience of civil servants, though broad and diverse, does not necessarily involve adjudicatory functions. In contrast, advocates, chartered accountants, and tax officers regularly engage in legal interpretation and adjudication. Hence, the "status" of tribunal members cannot be compared rigidly with that of civil servants, and the argument that service officers reach a certain rank only around the age of 50 cannot justify a minimum age requirement or determine equivalence.

98. Justice Bhat rejected the Union's contention that a minimum age of 50 years was necessary to maintain parity between members of the civil services and other eligible candidates for tribunal appointments. He held that the proposed equivalence between tribunal members and civil servants was misplaced, and the argument that such an age criterion ensured uniformity across services was without merit and therefore dismissed. It was held:

> "**107.** There are other points of distinction too between civil servants and members of tribunals. Members of tribunals are not drawn from any civil service; they are not holders of civil posts. Civil

servants, especially members of the All-India Services recruited by the Union, some of whom are deployed to different States, are governed by rules and other service conditions embodied in circulars and orders. These govern their entire universe of employment: starting with eligibility conditions, rules for recruitment and selection, pay and allowances, seniority, promotion, discipline and other matters related to misconduct, pension, terminal benefits etc. On the other hand, such rules or similar rules do not apply to members of tribunals not drawn from public service. It is only conditions of equivalence such as pay scale which they are assured of under the rules, which also determine their status. The manner of selection, conditions of eligibility, rules for their removal upon proven misbehaviour and so on, are entirely different from public servants. In fact, the latter category, i.e. members of tribunals not drawn from public service sources, *are not even holders of civil posts or members of any encadred civil service*. This has been clarified in at least two judgments of this court [*State of Maharashtra* v. *Labour Law Practitioners' Assn.*, (1998) 2 SCC 688 : 1998 SCC (L&S) 657 : (SCC p. 697, para 18) "*18. … Going by these tests laid down as to what constitutes judicial service under Article 236 of the Constitution, the Labour Court Judges and the Judges of the Industrial Court can be held to belong to judicial service."* In *S.D. Joshi* v. *High Court of Bombay*, (2011) 1 SCC 252, at p. 267, para 29 : (2011) 1 SCC (Civ) 106 : (2011) 1 SCC (L&S) 32 the previous decision in *Harinagar Sugar Mills Ltd.* v. *Shyam Sunder Jhunjhunwala*, AIR 1961 SC 1669 : (1962) 2 SCR 339 was quoted : (*Harinagar Sugar Mills case*, AIR p. 1680, para 32) "*32. … Broadly speaking, certain special matters go before tribunals, and the residue goes before the ordinary courts of civil judicature. Their procedures may differ, but the functions are not essentially different."* In *Union of India* v. *K.B. Khare*, 1994 Supp (3) SCC 502 : 1995 SCC (L&S) 105, this Court repelled the contention that members of the Central Administrative Tribunals were government officials,

subject to its rules : (SCC p. 508, para 17) "*17. … On the contrary, an independent judicial service, the appointment in CAT is on tenure basis. The pension relating to such post is clearly governed by Rule 8 of the Rules quoted above and at the risk of repetition, we may state it exhaustive in nature.*"]. They are not governed by Article 311 of the Constitution, nor are their conditions of service laid out in rules framed under the proviso to Article 309 of the Constitution. Such being the position, the argument of parity, in the opinion of the Court, is entirely devoid of merit.

108. Nor is the argument of the Attorney General that a uniform age is necessary, merited. There is no material to show that members recruited on the technical side, such as experts in engineering, scientific or other technical fields would be suitable only after they cross the age of 50. In fact, one can complete a doctoral thesis and become a holder of a Ph.D at the time that she or he is 30 years or even below. To be a professor, one has to possess 10 years teaching experience; there is no minimum age under the relevant regulations framed by the UGC. Even non-teaching personnel, on the basis of their research, can be designated professors [UGC Regulations on Minimum Qualifications for Appointment of Teachers and Other Academic Staff in Universities and Colleges and Measures for the Maintenance of Standards in Higher Education, 2010: "***4.0.0 DIRECT RECRUITMENT4.1.0 PROFESSOR*** *A. (i) An eminent scholar with PhD qualification(s) in the concerned/allied/relevant discipline and published work of high quality, actively engaged in research with evidence of published work with a minimum of 10 publications as books and/or research/policy papers.(ii) A minimum of ten years of teaching experience in university/college, and/or experience in research at the University/National level institutions/industries, including experience of guiding candidates for research at doctoral level.(iii) Contribution to educational innovation, design of new curricula and courses, and technology — mediated teaching learning process.(iv) A minimum score as*

stipulated in the Academic Performance Indicator (API) based Performance Based Appraisal System (PBAS), set out in this Regulation in Appendix III. Or *B. An outstanding professional, with established reputation in the relevant field, who has made significant contributions to the knowledge in the concerned/allied/relevant discipline, to be substantiated by credentials.*" <https://www.ugc.ac.in/oldpdf/regulations/revised_finalugcregulationfinal10.pdf> visited on 25-6-2021 @ 16 : 18 hours.]. As on date, there are vice-chancellors in some state and national universities who had not completed 45 years at the time of appointment. Such being the position, experience in the field either in the academic, technical or scientific field for a further period of 10 or 12 years or even 15 years would not add up to the minimum threshold of the impugned criteria, i.e. 50 years of age.

109. Purely as empirical data, ITAT has a sanctioned strength of 126 members, (which includes accountant members, technical members – who are drawn from the Indian Revenue Service holding the rank of Commissioner of Appeals, for 3 years, and advocates). 66 members presently are in office, appointed since the year 1999 [<https://itat.gov.in/page/content/members> (last accessed on 21-6-2021).]. Of these, 10 members were below the age of 40 at the time of their appointment; 20 members were between the ages of 40-45, and 15 members were between the ages of 46-50 at the time of their respective appointments. Cumulatively, 44 members out of 66 were appointed *below the age of 50*. Only 17 members were 50 or above at the time of their appointment. Data is not provided in respect of 5 members. This data as indeed similar data from other tribunals, shows that past appointment to these positions was amongst younger, and competent persons. The Union has not shown why this past history requires departure, and why that longstanding basis for appointing younger professionals, now needs to be departed from, in public interest. Significantly, commissioners of

> appeals (of income tax) – in the respective service rules, typically are appointed after 18 or so years of service; if one adds 3 years, an incumbent Commissioner could be well below 50 years. She or he would be completely familiar with the adjudicatory process in tax laws. Exclusion of such otherwise qualified and suited personnel, too, is irrational……."

99. Justice Bhat held that **MBA (IV)** had conclusively settled the law, making advocates eligible for appointment to all tribunals, and this mandate cannot now be ignored or diluted. The Union of India has, however, failed to take steps to implement the said direction.

100. Justice Bhat declared that all candidates who are otherwise qualified and experienced must be considered for appointment without reference to this age restriction. Further, to the extent that the 2021 Ordinance sought to curtail or interfere with the tenure of members appointed under interim orders, it was also declared invalid, and such members were held entitled to continue their full term under the pre-amended law and rules. He held:

> "**116.** …the curtailment of tenure to five years, of these few individuals appointed as members of tribunals, who were entitled to continue in office in terms of the preexisting enactments (upto the age of 62 years etc.) is arbitrary. Apart from the fact that the Union wishes to curtail their tenure despite the finality of directions of this court in *Roger Mathew*

> (2020) 6 SCC 1 and *MBA (IV),* there is no conceivable *rationale.* Nor has any overriding public interest been espoused as a justification for this. The divesting of *judicial office by legislative fiat,* in this court's opinion, directly affects the independence of the judiciary. It also amounts to *naked discrimination,* because all other members of the same tribunals would enjoy longer tenure, in terms of the pre-existing conditions of service, which prevailed at the time of their appointment."

101. Justice Bhat observed that the large volume of pending cases before tribunals reflects the significant judicial work they perform, making it essential that these bodies be staffed with competent and qualified judicial and technical members. He emphasized that the Union of India must urgently complete the appointment process to ensure timely and effective delivery of justice.

102. Justice Bhat expressed hope that this judgment in **MBA (V)**, in a line of decisions beginning with **MBA (I)**, would finally put an end to all issues on the subject. He concluded that the Court's intervention should not be seen as opposing parliamentary or executive wisdom. Instead, each judgment on tribunals contributes to the constitutional dialogue among the three branches of governance. He emphasized that the Court

intervenes only to uphold citizens' rights and ensure that adjudicatory bodies remain independent, competent, and fair.

103. Justice Hemant Gupta dissented from the majority. He emphasized that judicial directions under Articles 141 and 142 of the Constitution bind courts and authorities, but not the legislature, which has exclusive competence to enact laws. He stated that "the judiciary in exercise of power of judicial review can strike down any legislation which violates fundamental rights or if it is beyond the legislative competence, but the courts cannot direct the legislature to frame or enact a law and in a particular manner." He added that even "if it is contravening to any such direction, the legislature is within its jurisdiction to determine the minimum eligibility age for the purpose of appointment".

104. The jurisprudence on tribunals that has evolved through this long line of decisions forms the binding framework within which this Bench must operate. As a Bench of two Judges, we are constitutionally and judicially bound by the law declared in the decisions of larger Benches. The principles laid down by Constitution Benches and three-Judge Benches must be given full effect. Accordingly, the settled

jurisprudence of larger Benches not only informs but compels the conclusions we reach. It provides the normative standards against which the Impugned Act must be assessed, and we remain duty-bound to enforce those standards as part of the constitutional discipline that governs judicial decision-making.

V. ATTORNEY GENERAL'S PLEA TO REFER THE ISSUE TO A LARGER BENCH

105. During the course of the hearing on 4th November 2025, the learned Attorney General for India submitted that the Union of India has filed an application requesting that the present matter be placed before a larger bench, instead of the Bench presently seized of it. In principle, there can be no quarrel with the proposition that this Court may, in an appropriate case, constitute a larger Bench where issues of grave or substantial constitutional significance arise. However, in the present proceedings, the learned Attorney General has been unable to indicate any cogent or compelling reason that would justify such a reference at this stage.

106. Article 145(3) of the Constitution mandates the constitution of a Bench of at least five Judges only where a

"substantial question of law as to the interpretation of this Constitution" is involved. The questions which arise in this case concerning the constitution, composition, qualifications, conditions of service and functioning of tribunals have already been examined in detail by Constitution Benches of this Court in earlier decisions, including **MBA (I)** and ***Rojer Mathew*** *(supra)*. Those pronouncements have, in turn, been consistently applied and elaborated upon in subsequent decisions in **MBA (II)**, **MBA (III)**, **MBA (IV)** and **MBA (V)**. The present case does not present any new or unresolved constitutional question that would require reconsideration of those precedents or departure from them. A reference to a larger Bench would, in these circumstances, serve no meaningful jurisprudential purpose and would instead result in avoidable consumption of judicial time.

107. There is an additional consideration of procedural fairness. The request for reference has been made at a stage when the hearing before this Bench has progressed substantially and one side has already been fully heard. A prayer of this nature ought properly to be raised at an earlier point in the proceedings so that the Court and the parties may

structure their submissions accordingly. Entertaining such a plea belatedly would risk undermining fairness in the conduct of the hearing.

108. Finally, we cannot lose sight of the fact that the controversy before us directly affects the tenure, service conditions and legitimate expectations of a large number of individuals presently serving, or aspiring to serve, in tribunals across the country. More importantly, the persistent vacancies and uncertainty in the tribunal system have a direct bearing on access to justice for citizens whose disputes lie within their jurisdiction. Deferring adjudication, by now embarking on a reference to a larger Bench, would only prolong this state of uncertainty, to the detriment of litigants and the administration of justice.

109. For all these reasons, we are of the considered view that no case has been made out for a reference under Article 145(3). The application seeking reference to a larger Bench is, accordingly, rejected.

VI. ANALYSIS OF THE SUBMISSIONS

110. The first issue that arises for consideration is whether Parliament possesses the authority to disregard a judicial pronouncement and to enact a statute in any manner it deems appropriate. This contention goes to the core of the present debate. At its foundation lies an appeal to the doctrine of parliamentary supremacy, a principle recognised in several jurisdictions where the legislature is the supreme law-making body, unconstrained by judicial review. However, the Indian constitutional framework does not subscribe to parliamentary sovereignty, nor does it vest unqualified supremacy in the judiciary. The architecture of our Constitution is firmly rooted in the principle of constitutional supremacy.

111. In this regard, reference is drawn to in ***Special Reference No. 1 of 1964***[31] where Chief Justice Gajendragadkar, speaking for six Judges of the Court held:

> "**40.** In a democratic country governed by a written Constitution, it is the Constitution which is supreme and sovereign. It is no doubt true that the Constitution itself can be amended by the Parliament, but that is possible because Article 368 of the Constitution itself makes a provision in that behalf, and the amendment of the Constitution can be validly made only by following the procedure prescribed by the said article. That shows that even when the Parliament purports to amend the

[31] **1964 SCC OnLine SC 21**

> Constitution, it has to comply with the relevant mandate of the Constitution itself. Legislators, Ministers, and Judges all take oath of allegiance to the Constitution, for it is by the relevant provisions of the Constitution that they derive their authority and jurisdiction and it is to the provisions of the Constitution that they owe allegiance. Therefore, there can be no doubt that the sovereignty which can be claimed by the Parliament in England cannot be claimed by any legislature in India in the literal absolute sense."

112. Furthermore, in ***His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Another***[32] in his opinion, Chief Justice SM Sikri stated that "supremacy of the Constitution" is one of the features of the basic structure of the Constitution. Later, in ***State of Rajasthan and Others v. Union of India and Others***[33] Justice Bhagwati (as his Lordship then was), in his concurring opinion, summarized the principle as well:

> "**149.** .....It is necessary to assert in the clearest terms, particularly in the context of recent history, that the Constitution is Suprema lex, the paramount law of the land, and there is no department or branch of government above or beyond it. Every organ of government, be it the executive or the legislature or the judiciary, derives its authority from the Constitution and it has to act within the limits of its authority. No one howsoever highly placed and no authority howsoever lofty can claim that it shall be the sole judge of the extent of its power under the

[32] **(1973) 4 SCC 225**
[33] **(1977) 3 SCC 592**

> Constitution or whether its action is within the confines of such power laid down the Constitution……."

113. This was reiterated in ***Kalpana Mehta and Others v. Union of India and Others***[34] It was held by Chief Justice Deepak Mishra that:

> "**20.** …The Constitution is the fundamental document that provides for constitutionalism, constitutional governance and also sets out morality, norms and values which are inhered in various articles and sometimes are decipherable from the constitutional silence. Its inherent dynamism makes it organic and, therefore, the concept of 'constitutional sovereignty' is sacrosanct. It is extremely sacred and, as stated earlier, the authorities get their powers from the Constitution. It is the source. Sometimes, the constitutional sovereignty is described as the supremacy of the Constitution.
>
> …
>
> **23.** Thus, the three wings of the State are bound by the doctrine of constitutional sovereignty and all are governed by the framework of the Constitution. The Constitution does not accept transgression of constitutional supremacy and that is how the boundary is set."

114. In his concurring opinion, Justice Chandrachud (as his Lordship then was) stated as follows:

> "**227.** …The Constitution does not allow for the existence of absolute power in the institutions which it creates. Judicial review as a part of the basic features of the Constitution is intended to ensure

[34] **(2018) 7 SCC 1**

> that every institution acts within its bounds and limits…"

115. Thus, under the model of constitutional supremacy, every organ of the State derives its authority from the Constitution and remains bound by the limitations it prescribes. Parliament, though entrusted with wide legislative powers, must enact laws within the contours of its legislative competence and in conformity with constitutional rights, values, and structural principles. The power to assess whether a law comports with these limitations is expressly vested in the courts. When the Court interprets the Constitution and pronounces upon the validity of a statute, that pronouncement becomes the authoritative and binding declaration of the law. As has long been recognised, *the Constitution is what the Court says it is*, not in the sense of aggrandising judicial authority, but as a necessary corollary of the Court's role as the final arbiter of constitutional meaning. It would be apt to quote the words of Justice Bhagwati (as his Lordship then was) in ***Minerva Mills Ltd. and Others v. Union of India and Others***[35] that:

[35] **(1980) 3 SCC 625**

> "**87.** …the question arises as to which authority must decide what are the limits on the power conferred upon each organ or instrumentality of the State and whether such limits are transgressed or exceeded …The Constitution has, therefore, created an independent machinery for resolving these disputes and this independent Machinery is the judiciary which is vested with the power of judicial review…"

116. Consequently, once the Court has struck down a provision or issued binding directions after identifying a constitutional defect, Parliament cannot simply override or contradict that judicial decision by reenacting the very same measure in a different form. What Parliament may legitimately do is to cure the defect identified by the Court, whether by altering the underlying conditions, removing the constitutional infirmity, or restructuring the statutory framework in a manner consistent with the Court's reasoning. A valid legislative response must therefore engage with and remedy the constitutional violation pointed out by the judiciary. It cannot merely restate or repackage the invalidated provision.

117. Parliament, like every other institution under our constitutional scheme, must operate within the bounds of the Constitution. Its discretion is broad but not absolute. It must

respect the principles of separation of powers, the guarantees of fundamental rights, and the structural values (such as judicial independence) that are part of the basic framework of our constitutional order.

118. Where a legislative measure attempts to nullify or circumvent a binding constitutional judgment without curing the underlying defect, it not only exceeds Parliament's authority but also violates the doctrine of constitutional supremacy itself. This has been aptly discussed in the decision in ***NHPC LTD. v. State of Himachal Pradesh Secretary and Others***[36] The case arose out of a long-standing dispute concerning the imposition of water cess/royalty by the State of Himachal Pradesh on hydroelectric projects operated by NHPC (a Central Government undertaking). Earlier, certain notifications issued by the State were set aside by the Himachal Pradesh High Court, holding that the State lacked legislative competence under the Constitution to levy such cess on hydroelectric projects which were under the control of the Union Government. In response, the State legislature enacted the *Himachal Pradesh Water Cess on Hydro Power*

[36] **2023 INSC 810**

Generation Act, 2023, which purported to retrospectively validate the earlier imposts and revive the collections that had been invalidated by the court's judgment. NHPC challenged this new legislation before the Supreme Court, contending that it amounted to a legislative overruling of a judicial decision and violated the doctrine of separation of powers. The Court held:

> "**11.** What follows from the aforesaid judicial precedent is, a legislature cannot directly set aside a judicial decision. However, when a competent legislature retrospectively removes the substratum or foundation of a judgment to make the decision ineffective, the same is a valid legislative exercise provided it does not transgress on any other constitutional limitation. Such a legislative device which removes the vice in the previous legislation which has been declared unconstitutional is not considered to be an encroachment on judicial power but an instance of abrogation recognised under the Constitution of India. The decisions referred to above, manifestly show that it is open to the legislature to alter the law retrospectively, provided the alteration is made in such a manner that it would no more be possible for the Court to arrive at the same verdict. In other words, the very premise of the earlier judgment should be removed, thereby resulting in a fundamental change of the circumstances upon which it was founded.
>
> **12.** The power of a legislature to legislate within its field, both prospectively and to a permissible extent, retrospectively, cannot be interfered with by Courts provided it is in accordance with the Constitution. It would be permissible for the legislature to remove a defect in an earlier legislation, as pointed out by a

constitutional court in exercise of its powers by way of judicial review. This defect can be removed both prospectively and retrospectively by a legislative process and previous actions can also be validated. **However, where a legislature merely seeks to validate the acts carried out under a previous legislation which has been struck down or rendered inoperative by a Court, by a subsequent legislation without curing the defects in such legislation, the subsequent legislation would also be ultra-vires. Such instances would amount to an attempt to 'legislatively overrule' a Court's judgment by a legislative fiat, and would therefore be illegal and a colourable legislation**.

13. .....The role of the judiciary in galvanising our constitutional machinery characterised by institutional checks and balances, lies in recognising that while due deference must be shown to the powers and actions of the other two branches of the government, the power of judicial review may be exercised to restrain unconstitutional and arbitrary exercise of power by the legislature and executive organs. The power of judicial review is a part of the basic feature of our Constitution which is premised on the rule of law. Unless a judgment has been set aside by a competent court in an appropriate proceeding, finality and binding nature of a judgment are essential facets of the rule of law informing the power of judicial review. **In that context, we observe that while it may be open to the legislature to alter the law retrospectively, so as to remove the basis of a judgment declaring such law to be invalid, it is essential that the alteration is made only so as to bring the law in line with the decision of the Court**.....Simply setting at naught a decision of a court without removing the defects pointed out in the said decision, would sound the death knell for the rule of law. **The rule of law would cease to have any meaning if the legislature is at liberty to defy a judgment of a court by simply passing a validating legislation, without removing the defects forming the substratum of the**

judgment by use of a non-obstante clause as a technique to do so.

14. The legislative device of abrogation by enacting retrospective amendments to a legislation, as a means to remove the basis of a judgment and validate the legislation set aside or declared inoperative by a Court, must be employed only with a view to bring the law in line with the judicial pronouncement. Abrogation is not a device to circumvent any and all unfavourable judicial decisions. **If enacted solely with the intention to defy judicial pronouncement, such an amendment Act may be declared to be ultra-vires and as a piece of 'colourable legislation.**' The device of abrogation, by way of introducing retrospective amendments to remove the basis of a judgment, may be employed when a legislature is under the bonafide belief that a defect that crept into the legislation as it initially stood, may be remedied by abrogation An act of abrogation is permissible only in the interests of justice, effectiveness and good governance, and not to serve the oblique agenda of defying a court's order, or stripping it of its binding nature

15. The Constitution of India precludes any interference by the legislature with the administration of justice and judicial determination of the validity of a legislation. The power of abrogation is to be exercised in the light of the said Constitutional mandate. The legislative device of abrogation must be in accordance with the following principles which are not exhaustive:

(i) There is no legal impediment to enacting a law to validate a legislation which has been held by a court to be invalid, provided, such a law removes the basis of the judgment of the court, by curing the defects of the legislation as it stood before the amendment.

(ii) The validating legislation may be retrospective. It must have the effect that the judgment pointing out the defect

> would not have been passed, if the altered position as sought to be brought in by the validating statute existed before the court at the time of rendering its judgment.
>
> (iii) Retrospective amendment should be reasonable and not arbitrary and must not be violative of any Constitutional limitations.
>
> (iv) **Setting at naught a decision of a court without removing the defect pointed out in the said decision is opposed to the rule of law and the scheme of separation of powers under the Constitution of India**.
>
> (v) **Abrogation is not a device to circumvent an unfavourable judicial decision. If enacted solely with the intention to defy a judicial pronouncement, an Amendment and Validation Act of 1997 may be declared as ultra-vires**."
>
> [Emphasis supplied]

119. In a judgment of this Court in the case of ***Dr. Jaya Thakur v. Union of India and Others***[37] (to which one of us Gavai, J. as he then was a party) this Court held that a writ of mandamus could not be nullified by a subsequent legislation made by the legislator. That a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in

[37] **2023 SCC OnLine SC 813**

substance simply overrules a judgment unless the foundation of the judgment is removed. Referring to several judgments of this Court, the following principles as to the manner in which the device of abrogation could be employed, were identified as under:

> "**114.** It could, thus, clearly be seen that this Court has held that the effect of the judgments of this Court can nullified by a legislative act removing the basis of the judgment. It has further been held that such law can be retrospective. It has, however, been held that retrospective amendment should be reasonable and not arbitrary and must not be violative of the fundamental rights guaranteed under the Constitution. It has been held that the defect pointed out should have been cured such that the basis of the judgment pointing out the defect is removed. This Court has, however, clearly held that nullification of mandamus by an enactment would be impermissible legislative exercise. This Court has further held that transgression of constitutional limitations and intrusion into the judicial power by the legislature is violative of the principle of separation of powers, the rule of law and of Article 14 of the Constitution of India."

120. Therefore, we do not find merit in the argument of the learned Attorney General that Parliament has discretion to ignore the decisions of this Court.

121. The second central contention advanced by the Union is that the Court cannot compel Parliament to legislate in a particular manner. This principle is undoubtedly correct.

This Court has repeatedly acknowledged the institutional limits of judicial power and has cautioned against intruding into the prerogative of the legislature by dictating the precise contents of a statute. The constitutional scheme does not permit the judiciary to prescribe the text of a law or to mandate that Parliament adopt a specific policy choice.

122. However, this proposition does not carry the matter very far. While the Court cannot require Parliament to enact a law in a particular form, it unquestionably retains the authority, and indeed the constitutional obligation, to examine the validity of any law that Parliament enacts. Judicial review is a basic feature of the Constitution. If a legislative measure infringes fundamental rights, violates structural principles such as separation of powers or judicial independence, exceeds legislative competence, or frustrates binding constitutional directions, the Court may strike it down. The inability to compel Parliament to legislate in a specific manner does not translate into an obligation to blindly accept any law that Parliament enacts.

123. Thus, a clear distinction must be maintained between directing legislation and reviewing legislation. The former is

forbidden, because the Court cannot function as a law-maker. The latter is indispensable to preserving the supremacy of the Constitution. Where the Court identifies constitutional infirmities and issues mandatory directions to ensure compliance with constitutional principles, such as those concerning the independence, composition, or tenure of adjudicatory bodies, those directions are binding. Parliament may respond by removing the basis of the judgment through curative legislation, but it cannot simply enact a statute that reproduces or perpetuates the very defects the Court has critiqued. Thus, while the judiciary cannot dictate policy, it can and must ensure that legislative choices conform to the Constitution. Judicial restraint in law-making does not imply judicial abdication in constitutional adjudication.

124. The next submission is that the constitutionality of legislation cannot be tested on the touchstone of what the Union describes as "abstract principles," such as separation of powers or judicial independence. This argument, however, has already been examined in depth, particularly in the concurring opinion of Justice Ravindra Bhat in **MBA (V)**, and has been categorically rejected. As this Court has repeatedly

clarified, the principles of separation of powers and judicial independence are not vague, free-floating ideals. They are structural pillars of our constitutional order and integral components of constitutionalism worldwide.

125. Far from being abstract, these principles are firmly embedded in the text, scheme, and spirit of the Constitution. Judicial independence is inseparable from the guarantee of judicial review, and judicial review itself is the mechanism that ensures that all State action (legislative, executive, or judicial) conforms to the Constitution. Similarly, the doctrine of separation of powers is not merely philosophical. It underwrites the very distribution of authority among the three branches of government. It is reflected in Articles 32, 136, 141, 226, and 227 of the Constitution, which vest the judiciary with the power to interpret the law, enforce fundamental rights, and supervise subordinate courts and tribunals. It is also embedded in provisions relating to appointment, tenure, and removal of judges, all of which insulate the courts from executive dominance.

126. Legislative measures concerning the structure, composition, and functioning of tribunals necessarily

implicate these constitutional principles because tribunals discharge judicial functions and form part of the larger system of justice administration. When Parliament designs or alters the tribunal system, it must do so in a manner consistent with the constitutional requirements of independence, impartiality, and effective adjudication. A law that undermines these foundational values, such as by enabling executive control over appointments, curtailing tenure arbitrarily, or weakening institutional autonomy, does not merely offend an "abstract principle". It strikes at the core of the constitutional arrangement.

127. Furthermore, through the long line of decisions from ***Sampath Kumar*** *(supra)* to **MBA (V)**, this Court has consistently interpreted Articles 323-A and 323-B in a manner that firmly anchors the principles of separation of powers and judicial independence within the constitutional framework governing tribunals. These structural principles are not external additions but flow directly from the constitutional scheme embodied in these articles, which permit the creation of adjudicatory bodies exercising judicial power. Because tribunals perform functions that were traditionally within the

domain of courts, the standards applicable to judicial institutions necessarily inform the conditions of their appointments, qualifications, tenure, and service conditions. Over time, therefore, this Court's jurisprudence has evolved a set of constitutional benchmarks, guiding norms that define what an independent and effective tribunal must look like. These benchmarks constitute the operative test for evaluating the constitutional validity of laws pertaining to tribunals.

128. Therefore, when this Court scrutinises legislation affecting tribunals through the lens of separation of powers, judicial independence, and Article 14, it is not invoking amorphous notions but enforcing strict constitutional mandates. These structural principles provide the normative boundaries within which Parliament must legislate. To treat them as abstract or unenforceable would be to ignore decades of constitutional jurisprudence and to hollow out the very safeguards that ensure the rule of law.

129. The Court's interpretative authority to expand upon and define the scope of constitutional provisions is neither novel nor exceptional. It has consistently exercised this function in diverse contexts. For instance, by broadening the

ambit of fundamental rights under Articles 19 and 21, and by elaborating the process of judicial appointments under Articles 124 and 217. Once the Court interprets the content and purpose of a constitutional provision, that interpretation becomes binding and normative upon all branches of government, including the legislature and the executive.

130. Another example is ***M. Nagaraj and Others v. Union of India and Others***[38], where the Court upheld the constitutional amendments enabling reservation in promotions but simultaneously laid down mandatory preconditions, such as the collection of quantifiable data on backwardness, inadequacy of representation, and administrative efficiency, without which any implementing legislation would be unconstitutional. This was not treated as judicial legislation but as a constitutional framework within which Parliament and the States were required to operate. In the years that followed, various statutes and executive actions providing for reservation in promotions were invalidated because they failed to satisfy the ***Nagaraj*** *(supra)* requirements. The constitutional principles articulated by the

[38] **(2006) 8 SCC 212**

Court became the standard against which legislative validity was tested.

131. Similarly, the right to privacy upheld in ***K.S. Puttaswamy and Another v. Union of India and Others***[39] is not expressly stated in any single constitutional provision. Yet the Court traced its existence to the penumbra of various guarantees, Articles 19, 21, and 25, and to the broader constitutional commitment to dignity, autonomy, and liberty. Once articulated, the privacy framework became a guiding doctrine for assessing the validity of a wide range of laws and State actions, including those relating to personal autonomy.

132. In the same way, the norms laid down in the tribunal cases, regarding tenure, age limits, selection processes, qualifications, and independence from executive control, are not abstract judicial preferences. They are constitutional requirements distilled from Articles 323-A and 323-B read with the doctrines of separation of powers, independence of the judiciary, and the guarantee of equality under Article 14. These principles therefore furnish the constitutional tests that any legislation on tribunals must satisfy. Where Parliament

[39] **(2017) 10 SCC 1**

re-enacts provisions previously struck down without curing the underlying defect, the resulting legislation remains vulnerable to invalidation, not because the Court is imposing its own policy, but because the Constitution itself demands adherence to these structural safeguards.

133. When the Court examines the validity of a statutory provision governing tribunals, it does not issue legislative directions in the strict sense. Instead, it tests the law against these constitutionally entrenched standards. In doing so, the Court reinforces the idea that the tribunal system derives its constitutional legitimacy from adherence to the same principles that safeguard judicial independence and the rule of law.

134. Seen in this light, the Union's argument does not stand. The validity of legislation may, and must, be tested against structural principles such as separation of powers and judicial independence when the legislation in question directly implicates the constitutional design of the justice system. Judicial enforcement of these principles is an essential feature of constitutional adjudication, not an overreach.

VII. THE VALIDITY OF THE IMPUGNED ACT

135. We shall now consider whether the Impugned Act merely repackages what was struck down in **MBA (V)**, without curing its defects. On a comparison of the provisions of the 2021 Ordinance with the Impugned Act, it is found that several provisions are verbatim repeated. The following table captures this:

Tribunal Reforms Ordinance 2021	**Tribunal Reforms Act 2021**
Chapter XI Section 12: In the Finance Act, 2017 (hereinafter referred to as the Finance Act),— (i) for section 184, the following section shall be substituted, namely:— "184. (1) … Provided that a person who has not completed the age of fifty years shall not be eligible for appointment as a Chairperson or Member:	**Chapter II** Section 3: (1) … Provided that a person who has not completed the age of fifty years shall not be eligible for appointment as a Chairperson or Member.
184 (2) The Chairperson and Members of a Tribunal shall be appointed by the Central	3 (2) The Chairperson and the Member of a Tribunal shall be appointed by the Central

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Government on the recommendation of a Search-cum-Selection Committee (hereinafter referred to as the Committee) constituted under sub-section (3), in such manner as the Central Government may, by rules, provide.	Government on the recommendation of a Search-cum-Selection Committee constituted under sub-section (3), in such manner as the Central Government may, by rules, provide.
184 (3) The Search-cum-Selection Committee shall consist of— (a) the Chief Justice of India or a Judge of Supreme Court nominated by him— Chairperson of the Committee; (b) two Secretaries nominated by the Government of India — Members; (c) one Member, who– – (i) in case of appointment of a Chairperson of a Tribunal, shall be the outgoing Chairperson of the Tribunal; or (ii) in case of appointment of a Member of a Tribunal, shall be the sitting Chairperson of the Tribunal; or (iii) in case of the Chairperson of the Tribunal seeking re-appointment, shall be a retired Judge of the Supreme Court or a retired Chief Justice of a High Court nominated by the Chief Justice of India: Provided that, in the following cases, such Member shall always be a retired Judge of the Supreme Court or a retired Chief Justice of a High Court nominated by the Chief Justice of India, namely:— (i) Industrial Tribunal constituted by the Central Government under the	3 (3) The Search-cum-Selection Committee, except for the State Administrative Tribunal, shall consist of— (a) a Chairperson, who shall be the Chief Justice of India or a Judge of Supreme Court nominated by him; (b) two Members, who are Secretaries to the Government of India to be nominated by that Government; (c) one Member, who — (i) in case of appointment of a Chairperson of a Tribunal, shall be the outgoing Chairperson of that Tribunal; or (ii) in case of appointment of a Member of a Tribunal, shall be the sitting Chairperson of that Tribunal; or (iii) in case of the Chairperson of the Tribunal seeking re-appointment, shall be a retired Judge of the Supreme Court or a retired Chief Justice of a High Court, to be nominated by the Chief Justice of India: Provided that in the following cases, such Member shall always be a retired Judge of the Supreme Court or a retired Chief Justice of a High Court, to be nominated by the Chief Justice

Industrial Disputes Act, 1947; (ii) Tribunals and Appellate Tribunals constituted under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993; (iii) Tribunals where the Chairperson or the outgoing Chairperson, as the case may be, of the Tribunal is not a retired Judge of the Supreme Court or a retired Chief Justice or Judge of a High Court; and (iv) such other Tribunals as may be notified by the Central Government in consultation with the Chairperson of the Search-cum-Selection Committee of that Tribunal; and (d) the Secretary to the Government of India in the Ministry or Department under which the Tribunal is constituted or established — MemberSecretary.	of India, namely:— (i) Industrial Tribunal constituted by the Central Government under the Industrial Disputes Act, 1947 (14 of 1947); (ii) Debt Recovery Tribunal and Debt Recovery Appellate Tribunal established under the Recovery of Debts and Bankruptcy Act, 1993 (51 of 1993); (iii) where the Chairperson or the outgoing Chairperson, as the case may be, of a Tribunal is not a retired Judge of the Supreme Court or a retired Chief Justice or Judge of a High Court; and (iv) such other Tribunals as may be notified by the Central Government, in consultation with the Chairperson of the Search-cum Selection Committee of that Tribunal; and (d) the Secretary to the Government of India in the Ministry or Department under which the Tribunal is constituted or established— Member-Secretary: Provided that the Search-cum-Selection Committee for a State Administrative Tribunal shall consist of— (a) the Chief Justice of the High Court of the concerned State—Chairman; (b) the Chief Secretary of the concerned State Government— Member; (c) the Chairman of the Public Service Commission of the concerned State— Member; (d) one Member, who— (i) in case of appointment

	of a Chairman of the Tribunal, shall be the outgoing Chairman of the Tribunal; or (ii) in case of appointment of a Member of the Tribunal, shall be the sitting Chairman of the Tribunal; or (iii) in case of the Chairman of the Tribunal seeking re-appointment, shall be a retired Judge of a High Court nominated by the Chief Justice of the High Court of the concerned State: Provided that such Member shall always be a retired Judge of a High Court nominated by the Chief Justice of the High Court of the concerned State, if the Chairperson or the outgoing Chairperson of the State Administrative Tribunal, as the case may be, is not a retired Chief Justice or Judge of a High Court; (e) the Secretary or the Principal Secretary of the General Administrative Department of the concerned State—Member-Secretary.
184 (4) The Chairperson of the Committee shall have the casting vote.	3 (4) The Chairperson of the Search-cum-Selection Committee shall have the casting vote.
184 (5) The Member-Secretary of the Committee shall not have any vote.	3 (5) The Member-Secretary of the Search-cum-Selection Committee shall not have any vote.
184 (6) The Committee shall determine its procedure for	3 (6) The Search-cum-Selection Committee shall determine the

making its recommendations.	procedure for making its recommendations.
184 (7) Notwithstanding anything contained in any judgment, order or decree of any court or in any law for the time being in force, the Committee shall recommend a panel of two names for appointment to the post of Chairperson or Member, as the case may be, and the Central Government shall take a decision on the recommendations of the Committee preferably within three months from the date on which the Committee makes its recommendations to the Government.	3 (7) Notwithstanding anything contained in any judgment, order or decree of any court, or in any law for the time being in force, the Search-cum-Selection Committee shall recommend a panel of two names for appointment to the post of Chairperson or Member, as the case may be, and the Central Government shall take a decision on the recommendations made by that Committee, preferably within three months from the date of such recommendation.
184 (8) No appointment shall be invalid merely by reason of any vacancy or absence in the Committee.	3 (8) No appointment shall be invalid merely by reason of any vacancy or absence of a Member in the Search-cum-Selection Committee.
184 (9) The Chairperson and Member of a Tribunal shall be eligible for re-appointment in accordance with the provisions of this section: Provided that in making such re-appointment, preference shall be given to the service rendered by such person.	6. Eligibility for re-appointment.—(1) The Chairperson and Member of a Tribunal shall be eligible for re-appointment in accordance with the provisions of this Act: Provided that, in making such re-appointment, preference shall be given to the service rendered by such person.
184 (10) The Central	4. Removal of Chairperson or

Government shall, on the recommendation of the Committee, remove from office, in such manner as may be provided by rules, any Member, who— (a) has been adjudged as an insolvent; or (b) has been convicted of an offence which involves moral turpitude; or (c) has become physically or mentally incapable of acting as such a Member; or (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a Member; or (e) has so abused his position as to render his continuance in office prejudicial to the public interest: Provided that where a Member is proposed to be removed on any ground specified in clauses (b) to (e), he shall be informed of the charges against him and given an opportunity of being heard in respect of those charges.	Member of Tribunal.—The Central Government shall, on the recommendation of the Committee, remove from office, in such manner as may be provided by rules, any Chairperson or a Member, who— (a) has been adjudged as an insolvent; or (b) has been convicted of an offence which involves moral turpitude; or (c) has become physically or mentally incapable of acting as such Chairperson or Member; or (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such Chairperson or Member; or (e) has so abused his position as to render his continuance in office prejudicial to the public interest: **Note: The Explanation Clauses mentioned in the Ordinance have been removed from the Act.**
184 (11) Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, — (i) the Chairperson of a Tribunal shall hold office for a term of four years or till he attains the age of seventy years, whichever is earlier; (ii) the Member of a Tribunal shall hold office for a	5. Term of office of Chairperson and Member of Tribunal.— Notwithstanding anything contained in any judgment, order or decree of any court, or in any law for the time being in force,— (i) the Chairperson of a Tribunal shall hold office for a term of four years or till he attains the age of seventy years, whichever is earlier; (ii) the

term of four years or till he attains the age of sixtyseven years, whichever is earlier: Provided that where a Chairperson or Member is appointed between the 26th day of May, 2017 and the notified date and the term of his office or the age of retirement specified in the order of appointment issued by the Central Government is greater than that which is specified in this section, then, notwithstanding anything contained in this section, the term of office or age of retirement or both, as the case may be, of the Chairperson or Member shall be as specified in his order of appointment subject to a maximum term of office of five years."	Member of a Tribunal shall hold office for a term of four years or till he attains the age of sixty-seven years, whichever is earlier: Provided that where a Chairperson or Member is appointed between the 26th day of May, 2017 and the notified date, and the term of his office or the age of retirement specified in the order of appointment issued by the Central Government is greater than that which is specified in this section, then, notwithstanding anything contained in this section, the term of office or age of retirement or both, as the case may be, of the Chairperson or Member shall be as specified in his order of appointment, subject to a maximum term of office of five years.
13 "(2) Subject to the provisions of sections 184 and 185, neither the salary and allowances nor the other terms and conditions of service of Chairperson, Vice Chairperson, Chairman, Vice-Chairman, President, VicePresident, Presiding Officer or Member of the Tribunal, Appellate Tribunal or, as the case may be, other Authority may be varied to his disadvantage after his appointment.".	7 (2) Neither the salary and allowances nor the other terms and conditions of service of the Chairperson or Member of the Tribunal may be varied to his disadvantage after his appointment.
184. (1) The Central	7. (1) Salary and allowances.—

Government may, by notification, make rules to provide for the qualifications, appointment, salaries and allowances, resignation, removal and the other conditions of service of the Chairperson and Members of the Tribunal as specified in the Eighth Schedule: Provided further that the allowances and benefits so payable shall be to the extent as are admissible to a Central Government officer holding the post carrying the same pay: Provided also that where the Chairperson or Member takes a house on rent, he may be reimbursed a house rent subject to such limits and conditions as may be provided by rules.	(1) Notwithstanding anything contained in any judgment, order or decree of any court, or in any law for the time being in force, and without prejudice to the generality of the foregoing power, the Central Government may make rules to provide for the salary of the Chairperson and Member of a Tribunal and they shall be paid allowances and benefits to the extent as are admissible to a Central Government officer holding the post carrying the same pay: Provided that, if the Chairperson or Member takes a house on rent, he may be reimbursed a house rent higher than the house rent allowance as are admissible to a Central Government officer holding the post carrying the same pay, subject to such limitations and conditions as may be provided by rules.

136. Furthermore, across the Copyright Act, Customs Act, Patents Act, and Airports Authority of India Act, the paired provisions reproduced in the Impugned Act are substantively identical to those found in the earlier Ordinance. Each set abolishes existing tribunal or appellate structures, such as the Appellate Board, Appellate Authority, or other specialised tribunals, and transfers their jurisdiction to High Courts or

Commercial Courts. The wording, structure, and legal effect remain the same in both versions, with only minor formatting or clarificatory differences. In essence, the Impugned Act simply carries forward, almost verbatim, the amendments earlier introduced through the 2021 Ordinance, reaffirming the same statutory shift from tribunal-based adjudication to court-based adjudication.

137. Similarly, the amendments made through the 2021 Ordinance to the *Trade Marks Act, 1999*, the *Geographical Indications of Goods (Registration and Protection) Act, 1999*, the *Protection of Plant Varieties and Farmers' Rights Act, 2001, and the Control of National Highways (Land and Traffic) Act, 2002* are retained in full within the Impugned Act. These provisions continue the same policy direction, removing specialised tribunals and reallocating their functions to High Courts or other judicial bodies, without introducing any substantive changes from the 2021 Ordinance.

138. Further, the Impugned Actextends this pattern by amending several additional statutes. The *Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976*, the *Administrative Tribunals Act, 1985*, the *Railway*

Claims Tribunal Act, 1987, the *Securities and Exchange Board of India Act, 1992*, the *Recovery of Debts and Bankruptcy Act, 1993*, and the *Telecom Regulatory Authority of India Act, 1997* are all modified in the same manner. In each of these statutes, the Act replaces references to the earlier framework under *Part XIV of Chapter VI of the Finance Act, 2017* with references to the Impugned Act, specifying that the appointment, tenure, and service conditions of tribunal members will now be governed by Chapter II of the new Act.

139. Thus, it can be seen that what the 2021 Ordinance did through amendments to Section 184 of the *Finance Act, 2017*, the Impugned Act now does through Sections 3, 5, and 7. The minimum age bar of fifty years for all appointments, the truncated four-year tenure with upper age caps of 70/67, the requirement that the Search-cum-Selection Committee forward a panel of two names for each vacancy, and the fixing of allowances and benefits to those of equivalent civil servants are all provisions, which have already been judicially tested and struck down. The Court has expressly held that these measures are arbitrary, destructive of judicial independence,

and amount to an impermissible legislative override of binding directions.

140. Merely shifting the same content from the amended Section 184 of the Finance Act into Sections 3, 5 and 7 of a stand-alone statute, while using the *non obstante* formula "notwithstanding anything contained in any judgment or order", does not cure the constitutional defects. It simply re-enacts them in another avatar. The Impugned Act, therefore, does not "cure" the law declared earlier, but consciously defies it.

141. Equally, the learned Attorney General's present defence of the Impugned Act is a verbatim reprise of arguments that have already been considered and rejected. In the earlier round, the Union had contended that directions regarding age, tenure, HRA and the recommendation of a single name were mere "suggestions", that Parliament is free to depart from them in exercise of its policy-making power, and that judicial review must be confined to testing explicit textual violations of the Constitution. The decision in **MBA (V)** rejected this argument on multiple grounds. *First*, it held that the directions on composition, tenure and conditions of service

were in the nature of mandamus flowing from adjudication on separation of powers, independence of the judiciary and Article 14, and therefore constitute "law declared" under Article 141. *Second*, it held that while the legislature may neutralise a judgment by curing the underlying defect, it cannot simply re-enact the very provision or rule that was struck down and declare the Court's view to be non-binding. Such repetition was described as an "impermissible legislative override" and an "indirect intrusion into the judicial sphere". *Third*, it emphasised that separation of powers and judicial independence are justiciable constitutional principles, and that in matters affecting the structure and functioning of adjudicatory bodies, the Court must apply a searching standard of review and cannot defer to "policy" in the same way as in economic or commercial regulation.

The Impugned Act thus stands on two identical, already-rejected premises: it reproduces the substance of provisions invalidated in the earlier litigations without curing the defects, and it rests on constitutional arguments that the Court has already expressly disapproved.

142. Therefore, the provisions of the Impugned Act cannot be sustained. They violate the constitutional principles of separation of powers and judicial independence, which are firmly embedded in the text, structure, and spirit of the Constitution. The Impugned Act directly contradicts binding judicial pronouncements that have repeatedly clarified the standards governing the appointment, tenure, and functioning of tribunal members. Instead of curing the defects identified by this Court, the Impugned Act merely reproduces, in slightly altered form, the very provisions earlier struck down. This amounts to a legislative override in the strictest sense: an attempt to nullify binding judicial directions without addressing the underlying constitutional infirmities. Such an approach is impermissible under our constitutional scheme. Because the Impugned Act fails to remove the defects identified in prior judgments and instead reenacts them under a new label, it falls afoul of the doctrine of constitutional supremacy. Accordingly, the impugned provisions are struck down as unconstitutional.

VIII. PROTECTION EXTENDED

143. We also clarify that in **MBA (IV)** and **MBA (V)**, the learned Attorney General for India had expressly submitted before this Court that the appointments of Members and Chairpersons made prior to the enactment of the impugned framework would stand protected. Although no such assurance has been offered in the present proceedings, the underlying principle remains the same. Stability of tenure and protection of vested rights are essential components of judicial independence, and the Court's earlier directions on this subject cannot be lightly departed from.

144. It will be relevant to note that in the case of ***Kudrat Sandhu*** *(supra)*, while dealing with the aspect as to whether an interim order be passed in respect of the Members of the Central Administrative Tribunal, this Court *vide* order dated 9th February 2018 recorded the statement of the then learned Attorney General for India appearing in the said matter, which reads thus:

> "…
>
> Mr. Venugopal, learned Attorney General has submitted that he has no objection if the suggestions, barring suggestion nos.4 and 5, are presently followed as an interim measure. On a query being

made whether the said suggestions shall be made applicable to all tribunals, learned Attorney General answered in the affirmative.

He would, however, suggest that suggestions nos.4 and 5 should be recast as follows:

> 4. All appointments to be made in pursuance to the selection made by the interim Search-cum-Selection Committee shall abide by the conditions of service as per the old Acts and the Rules.
>
> 5. A further direction to the effect that all the selections made by the aforementioned interim selection committee and the consequential appointment of all the selectees as Chairman/Judicial/Administrative members shall be for a period as has been provided in the old Acts and the Rules.

In view of the aforesaid, we accept the suggestions and direct that the same shall be made applicable for selection of the Chairpersons and the Judicial/Administrative/Technical/Expert Members for all tribunals.

…"

145. Subsequently, *vide* order dated 16th July 2018, while dealing with the age of superannuation of the ITAT Members, this Court observed thus:

"…

At this juncture, we may note that there is some confusion with regard to the Income Tax Appellate Tribunal (ITAT) as regards the age of superannuation. We make it clear that the person selected as Member of the ITAT will continue till the age of 62 years and the person holding the post of President, shall continue till the age of 65 years.

…"

146. Thereafter, *vide* order dated 21st August 2018, while dealing with the age of superannuation of the CESTAT Members, this Court observed thus:

> "**2.** …We, accordingly, are of the view that the clarification issued for the ITAT in the order dated 20 March 2018 needs to be reiterated in the case of the members of the CESTAT, which we do. We clarify that a person selected as Member of the CESTAT will continue until the age of 62 years while a person holding the post of President shall continue until the age of 65 years."

147. It is not in dispute that in respect of some of the Members of the ITAT, the recommendations were made by the SCSC on 21st September 2019. The same was put up before the Appointment Committee of the Cabinet[40] on 16th October 2019. In the meantime, the judgment in the case of ***Rojer Mathew*** *(supra)* was delivered by this Court on 13th November 2019. As such, appointments of all persons whose recommendations were made on 21st September 2019 and whose names were approved by the ACC ought to have been made immediately after the judgment in the case of ***Rojer Mathew*** *(supra)* was delivered. This would have been consistent with the statement made by the then learned

[40] **Hereinafter, "ACC".**

Attorney General on 9th February 2018. However, for the reasons best known to the Union of India, the appointment orders were issued only on 11th September 2021 and 1st October 2021. According to the appointment order, the said appointments, including their tenure, are in terms of the new provisions. We are, therefore, of the considered view that the said appointments by the Central Government are totally inconsistent with the statement made by the learned Attorney General on 9th February 2018.

148. We are giving these details with regard to ITAT Members only as an example. There may be such cases in respect of other Tribunals also.

IX. CONCLUSION

> "The form of the administration must be appropriate to and in the same sense as the form of the Constitution. The other is that it is perfectly possible to pervert the Constitution, without changing its form by merely changing the form of the administration and to make it inconsistent and opposed to the spirit of the Constitution."
>
> **— Dr. B.R. Ambedkar in Constituent Assembly (4 November 1948)**

149. The *foresighted constitutional vision* of Dr. Ambedkar is strikingly evident in the present series of litigations concerning the tribunal system. The repeated reenactment of the same

provisions, which have been struck down by the judiciary, shows that the "form of the administration" is being made "inconsistent" with the spirit of the Constitution, as Dr. Ambedkar had highlighted. The issues raised in the present petitions are not new to constitutional adjudication. They have engaged the attention of this Court on several earlier occasions, spanning more than three decades. We must express our disapproval of the manner in which the Union of India has repeatedly chosen to not accept the directions of this Court on the very issues that have already been conclusively settled through a series of judgments. It is indeed unfortunate that instead of giving effect to the well-established principles laid down by this Court on the question of the independence and functioning of tribunals, the legislature has chosen to re-enact or re-introduce provisions that reopen the same constitutional debates under different enactments and rules.

150. In a judicial system already burdened with a staggering pendency across the Supreme Court, High Courts, and district courts, the continued recurrence of such issues consumes valuable judicial time that could otherwise be devoted to adjudicating matters of pressing public and constitutional

importance. The responsibility of reducing pendency in courts does not rest only on the judiciary. It is a shared institutional duty. While the judiciary must strive to enhance efficiency in case management and decision-making, the other branches of government must exercise their legislative and executive powers with due regard to constitutional principles and judicial precedent. Respect for settled law is as essential to good governance as it is to judicial discipline. It ensures that institutional time is spent in advancing justice rather than revisiting questions long resolved.

151. We direct that unless the constitutional concerns repeatedly highlighted by this Court in the series of tribunal-related judgments are fully addressed and cured, and unless Parliament enacts an appropriate legislation that faithfully gives effect to those principles, the principles and directions laid down in **MBA (IV)** and **MBA (V)** shall continue to govern all matters relating to the appointment, qualifications, tenure, service conditions, and allied aspects concerning tribunal members and chairpersons. These judgments represent the binding constitutional standards necessary to preserve judicial independence and to ensure that tribunals function

as effective and impartial adjudicatory bodies. Accordingly, they shall operate as the controlling framework.

152. As consistently directed in the earlier judgments of this Court, the executive bears a constitutional obligation to establish a National Tribunals Commission in accordance with the principles and framework articulated therein. The creation of such a commission is an essential structural safeguard designed to ensure independence, transparency, and uniformity in the appointment, administration, and functioning of tribunals across the country. The repeated judicial insistence on this body reflects the Court's recognition that piecemeal reforms cannot remedy the systemic deficiencies that have persisted for decades.

153. We grant the Union of India a period of four months from the date of this judgment to establish a National Tribunals Commission. The commission so constituted must adhere to the principles articulated by this Court, particularly concerning independence from executive control, professional expertise, transparent processes, and oversight mechanisms that reinforce public confidence in the system.

154. We, further, clarify and direct that the service conditions of all such Members of ITAT who were appointed by orders dated 11th September 2021 and 1st October 2021 shall be governed by the old Act and the old Rules.

155. We also clarify that all appointments of Members and Chairpersons whose selection or recommendation by the Search-cum-Selection Committee was completed before the commencement of the *Tribunal Reforms Act, 2021*, but whose formal appointment notifications were issued after the Act came into force, shall be protected. Such appointments will continue to be governed by the parent statutes and by the conditions of service as laid down in **MBA (IV)** and **MBA (V)**, rather than by the truncated tenure and altered service conditions introduced by the *Tribunal Reforms Act, 2021*.

156. The Writ Petitions are *disposed of* in the above terms.

157. Pending application(s), if any, shall stand disposed of.

158. We place on record our deep appreciation for Shri Arvind P. Datar, Shri C.S. Vaidyanathan, Shri Sidharth Luthra, Shri P. S. Patwalia, Shri Sanjay Jain, Shri Porus F. Kaka, Shri Gopal Sankaranarayanan, Shri Balbir Singh, Shri Gagan Gupta, Shri Puneet Mittal, Shri Sachit Jolly,

Shri B.M. Chatterji, Shri Ninad Laud, learned Senior Counsel/counsel. We also place on record our appreciation for Shri R. Venkataramani, learned Attorney General for India, and Ms. Aishwarya Bhati, learned Additional Solicitor General.

.....CJI
(B.R. GAVAI)

I respectfully concur with the reasoning and directions. *The Tribunal Reforms Act, 2021* is a replica of the struck down Ordinance; old wine in a new bottle, the wine whets not the judicial palette, but the bottle merely dazzle.

.....J
(K. VINOD CHANDRAN)

NEW DELHI;
NOVEMBER 19, 2025.