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Analysing developments impacting business

NOTE | ROGER MATHEW V. SOUTH INDIAN BANK LIMITED & ORS

21 November 2019

1. By its judgment dated 13 November 2019 in Civil Appeal No. 8588 of 2019 titled "*Roger Mathew v. South Indian Bank Limited & Ors*" and other connected matters the Supreme Court has dealt with and decided the constitutionality of Part XIV of the Finance Act, 2017 and the Rules made thereunder.

2. The core issues before the Supreme Court were as follows:

   a. Whether the Finance Act, 2017 (the Finance Act) satisfies the test of a Money Bill under Article 110 of the Constitution of India?

   b. Whether Section 184 of the Finance Act is unconstitutional on account of excessive delegation of power to the Executive?

   c. Whether Tribunal, Appellate Tribunal and Other Authorities (Qualifications, Experience and Other Conditions of Service of Members) Rules, 2017 (Rules) are in consonance with the parent enactments and various decisions of the Supreme Court on the functioning of Tribunals?

   d. Whether direct statutory appeals from Tribunals to the Supreme Court ought to be detoured?

   e. Whether there is a need for amalgamation of existing Tribunals and setting up of benches?

A. ***Issue No.1:*** *Whether the Finance Act satisfies the test of a Money Bill under Article 110 of the Constitution of India?*

3. The Finance Act was an unusual piece of legislation unlike the normal annual finance acts which deal with the financial matters of all the Union of India and seek to obtain legislative sanctions for the proposals put forward in the Union Budgets.

4. The Finance Act had several provisions which went beyond the scope of the normal finance acts. One of the major issues included in the Finance Act in Part XIV were provisions concerning the functionality of tribunals. The constitutional validity of this part was challenged on the ground that these provisions could not form part of a money bill for the purposes of Act 110 of the Constitution passed as a money bill. The Petitioners argued that Part XIV of the Finance Act

was not a "money bill", and had been inserted in the Finance Act only in order to circumvent the Rajya Sabha.

5. In light of the said argument, the Supreme Court examined Article 110 of the Constitution which defines 'Money Blll'. The Supreme Court while taking note of its decision of ***Justice Puttaswamy (Retd.) & Anr. Vs. Union of India*, 2019 (1) SCC 1** (the "**Puttaswamy case**") held that the majority dictum in the said judgment did not substantially discuss the effect of the word "only" in Article 110(1) of the Constitution and therefore offers little guidance on the repercussion of a finding when some provisions of the enactment passed as a Money Bill do not conform to Article 110(1)(a) to (g) of the Constitution.

6. The Court noted that given the various challenges made to the scope of judicial review in matters under Article 110(3) of the Constitution and interpretative principles of the majority in Puttaswamy case, it is essential to determine the correctness of the said case/judgment. Since the judgment in the Puttaswamy case was passed by a bench of coordinate strength and the judgment of ***L. Chandra Kumar v Union of India*, 1997 (3) SCC 261** ("**L Chandra Kumar case**"), which extensively dealt with the issue of tribunalisation was passed by a bench of seven judges, the Court referred the said issue for consideration by a larger bench.

7. Justice D.Y. Chandrachud in his separate judgment has also held that Part XIV of the Finance Act could not have been enacted in the form of a Money Bill. Chandrachud J also held that despite the directions issued by the Supreme Court in L. Chandra Kumar case, no action has been taken by the legislature to put in place an umbrella organization which would be tasked with addressing the drawback of the system.

8. Chandrachud J has recommended constitution of an independent statutory body called "National Tribunal Commission" to oversee the selection process of members, criteria for appointment, salaries and allowance, introduction of common eligibility criteria, for removal of Chairperson and Members as also for meeting the requirement of infrastructure and financial resources. The Learned Judge has also recommended the composition of the said Commission.

B. ***Issue No.2:*** Whether Section 184 of the Finance Act is unconstitutional on account of excessive delegation of power to the Executive?

9. Section 184 of the Finance Act dealt with the power of the Central Government to make rules to provide for qualification, appointment, term and conditions of services, salary and allowances etc. of Chairperson, Vice Chairperson and members etc. of the Tribunal, Appellate Tribunal and other authorities.

10. The challenge to Part XIV of the Finance Act was also predicated on the assertion that this is a case of excessive delegation as it faulters on the anvil of essential legislative functions and policy and guideline tests. The case of the Petitioners was that Part XIV read with 8th and 9th Schedule of the Finance Act are ex facie unconstitutional, arbitrary, a colourable exercise of legislative power and offends the basic structure of the Constitution.

11. It was the Petitioners' contention that the said provisions take away all judicial safeguards and make the Tribunals amenable to the whims and fancies of the largest litigant, the State.

12. The Supreme Court held that the powers delegated to the Central Government under the Finance Act are not intended to vest solely with a legislature for all times and purposes and policies and guidelines exists in relation to the same. Further, the Court held that a mere possibility or eventuality of abuse of

delegated powers in absence of any evidence supporting such claim cannot be a ground for striking down the provisions of the Finance Act. The Court also held that it is always open to a Constitutional Court on challenge made to the delegated legislation framed by the Executive to examine whether it confirms to the parent legislation and other laws and if found contrary, the same be struck down without affecting the Constitutionality of the rule making power. The Court therefore held that Section 184 of the Finance Act is not unconstitutional.

13. Justice Deepak Gupta in his separate judgment has differed from the majority decision regarding the constitutionality of Section 184 of the Finance Act. Gupta J has held that the chairperson / members of these Tribunals are discharging constitutional functions of delivering justice to people. The essential qualifications and authorities of such members / chairpersons is an essential part of legislative functions. As far as providing qualifications for appointment are concerned, these qualifications have to be provided in the legislation and could not be delegated. However, as far as other terms and conditions such as pay and allowances are concerned, these can be delegated.

14. Gupta J has also held that the Finance Act does not provide any guideline regarding the qualification, the eligibility criteria, experience etc. required for those who are to be appointed as Chairpersons / members of the Tribunal. There being no guideline, unfettered and unguided powers have been vested with the delegatee. Therefore, Section 184 of the Finance Act in so far as delegates the power to lay down qualifications as specified in column 2 of the 8th schedule suffers from the vice of excessive delegation and is accordingly struck down.

C. ***Issue No.3:*** Whether Tribunal, Appellate Tribunal and Other Authorities [Qualifications, Experience and Other Conditions of Service of Members] Rules, 2017 are in consonance with the parent enactments and various decisions of the Supreme Court on functioning of the Tribunal?

15. The contention of the Petitioners was that the Rules are ultra vires the parent Act, which is the Finance Act, and the binding dictum expressed by the Supreme Court in a catena of judgments.

16. The Rules provide for various aspects concerning the functioning of tribunals - composition of the Search-cum-Selection Committees, qualifications of members and presiding officers, term of office and maximum age of Tribunal members, procedure for removal of Tribunal members etc.

17. In relation to the composition of the search cum selection committee, the Court held that the lack of judicial dominance in the said committee is in direct contravention of the doctrine of separation of powers and is an encroachment on the judicial domain. The composition of a search and selection committee under the Rules is contemplated in a manner whereby appointments of member, vice president and president are predominantly made by the nominees of the Central Government and there is only token representation of the Chief Justice or his nominees in the Committee, which impinges on the independence of the judiciary. The Court held that the composition of the search cum selection committee under the Rules amounts to an excessive interference by the Executive on the appointment of members and presiding officers of the statutory Tribunal. Such influence or control on judicial appointments is detrimental to the independence of judiciary.

18. As regards the qualification of members and presiding officer, the Court observed that the Rules are formulated in complete ignorance of the earlier judgments of the Supreme Court that provide for appointment of technical

members without any adjudicatory / judicial experience. The Court held that this has an effect of dilution of judicial character in the adjudicatory positions. The Court held that the Supreme Court in ***Madras Bar Association v. Union of India,*** **2014 (10) SCC 1** had clarified that members of the Tribunal replacing any Court must possess expertise and law and shall have appropriate legal experience. Further, the Tribunal must be manned by members having qualifications equivalent to that of the court from which adjudicatory function is transferred.

19. The Court held that for a Tribunal to have the character of a quasi- judicial body and for it to be a legitimate replacement of courts, it must essentially possess a dominant judicial character through its members / presiding officers.

20. The Court held that the stature of people manning an institution lends credibility and colour to the institution itself. Permitting such institutions to also be occupied by persons who have not manned an equivalent position or those who possess lesser judicial experience does not augur well for the Tribunal.

21. As regards constitutionality of the procedure of removal, it was held that under the Rules, it is permissible for the Central Government to appoint an enquiry committee for removal of any presiding officer or member on its own. The Rules do not explicitly provide as to who would be part of such a committee and what would be the role of judiciary in this process. The Court held that allowing judges to be removed by the Executive is palpably unconstitutional and is against independence of judiciary. The Court held that the dictum in Madras Bar Association (Supra) in this regard shall be observed in letter and spirit and the members and presiding officers of Tribunal cannot be removed without either the concurrence of the judiciary or in the manner specified in the Constitution for Constitutional Courts judges.

22. In relation to the terms of office and maximum age of members and Chairperson / Presiding Officer, the Court held that the tenure of three years of members of Tribunals attempts to create equality between unequal. It was also held that such tenure of illusionary. The Court held that the Supreme Court in ***Union of India v. Madras Bar Association,*** **2010 (11) SCC 8** had criticized a short tenure of members of Tribunals and recommended a long tenure. Therefore, the Rules require re-consideration.

23. The Court therefore concluded that the Rules suffer from the aforementioned infirmities and are contrary to the parent enactment and the principles envisaged in the Constitution as interpreted by the Supreme Court. The Court struck down the Rules in entirety.

D. ***Issue No.4***: Whether direct statutory appeals from Tribunals to the Supreme Court ought to be detoured?

24. The Court noted that the said issue was not directly raised by the Petitioners and only a passing reference was made to this issue. It was held that it is necessary to delineate whether providing such direct statutory appeal to the Supreme Court is in consonance with the three tier judicial systems as established under the Constitution. The jurisdiction bestowed in the Court can be divided into three limbs, i.e. appellate, original and advisory.

25. The Court held that in providing for appeals, directly from Tribunals, the jurisdiction of the High Courts is in effect curtailed to a great extent. Such appeal also takes away the inherent ability of the Supreme Court to regulate cases before it by confining its consideration to cases involving most egregious of wrongs or having the greatest impact on the public interest.

26. The provision for statutory appeals to the Supreme Court leads to the inevitable result of imposing a heavy burden on the apex Court, thereby inhibiting access to justice. The Court has held that considering the impediment(s) caused by such direct appeals, the Union of India shall revisit such provisions under various enactments providing for direct appeals to the Supreme Court against orders of Tribunals and instead provide appeals to Division Benches of High Court. The Court has directed the Union of India to undertake such an exercise expeditiously preferably within a period of six months at the maximum and place its finding before the Parliament for appropriate actions as it may be deemed fit.

E. ***Issue No.5***: Whether there is a need for amalgamation of existing Tribunals and setting up of Benches?

27. The Petitioners had argued that while some tribunals have immense pendency of matters, other tribunals are hardly seized of any matters and are exclusively situated in one location.

28. In response to this issue, the Court has held that there is a need- based requirement to conduct judicial impact assessment of all Tribunals referable to the Finance Act, so as to analyze the ramification of the changes in the framework of Tribunals provided under Finance Act. Directions in this regard have been issued to the Ministry of Law and Justice.

29. The Court observed that there is evident imbalance in distribution of case load and inconsistencies in nature, location and functioning of Tribunals. As a result, some Tribunal do not have critical mass of cases required for setting up multiple benches, while Tribunals are overburdened to the extent that they are pressed for resources and personnel.

30. The Court has also directed Union of India to rationalize and amalgamate the existing Tribunals depending upon their case load and commonality of subject matter after conducting the judicial impact assessment. Additionally, the Court has directed the Union of India to ensure that, at the very least, circuit benches of all Tribunals are set up at all the six major jurisdictional High Courts.

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